

103^D CONGRESS
2^D SESSION

H. R. 3800

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 3, 1994

Mr. SWIFT, by request (for himself, Mr. DINGELL, Mr. MINETA, Mr. ROSTENKOWSKI, and Mr. APPELEGATE) introduced the following bill; which was divided and referred as follows: titles I through VIII jointly to the Committees on Energy and Commerce and Public Works and Transportation; and title IX to the Committee Ways and Means

A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Superfund Reform Act
5 of 1994”.

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1 **TITLE I—COMMUNITY PARTICIPATION** 2 **AND HUMAN HEALTH**

3 **SEC. 101. PURPOSES AND OBJECTIVES.**

4 The purposes and objectives of the community par-
5 ticipation activities required by this title are to—

- 6 (a) inform citizens and elected officials at all
7 levels of government of the existence and status of
8 facilities listed on the National Priority List and
9 contaminated sites identified on State Registries (as
10 established by section 207 of this Act);

1 (b) provide citizens with information regarding
2 the Superfund identification and cleanup process
3 and maintain lists of technical, health and other rel-
4 evant experts licensed or located in the state who are
5 available to assist the community;

6 (c) ensure wide dissemination of and access to
7 information in a manner that is easily understood by
8 the community, considering any unique cultural
9 needs of the community, including presentation of
10 information orally and distribution of information in
11 languages other than English; and

12 (d) ensure that the President is aware of and
13 considers the views of affected communities.

14 **SEC. 102. EARLY, DIRECT AND MEANINGFUL COMMUNITY**
15 **PARTICIPATION.**

16 (a) Section 117(e)(1) of the Comprehensive Environ-
17 mental Response, Compensation, and Liability Act of
18 1980, referred to in this Act as “the Act” (42 U.S.C.
19 9617) is amended by amending the first sentence to read
20 as follows:

21 “(1) AUTHORITY.—Subject to such amounts as
22 are provided in appropriations Acts and in accord-
23 ance with rules promulgated by the President, the
24 President may make grants or services available to
25 any group of individuals which may be affected by

1 a release or threatened release of a hazardous sub-
2 stance or pollutant, or contaminant at or from a fa-
3 cility where there is significant response action
4 under this Act including, a site assessment, remedial
5 investigation/feasibility study, or other removal or
6 remedial action.”.

7 (b) Section 117(e) of the Act is amended by striking
8 paragraph (2) and inserting the following:

9 “(2) AMOUNT.—The amount of any grants or
10 services may not exceed \$50,000 for a single recipi-
11 ent of grants or services. The President may waive
12 the \$50,000 limitation in any case where such waiv-
13 er is necessary to carry out the purposes of this sub-
14 section. Each recipient of grants or services shall be
15 required, as a condition of the grants or services, to
16 contribute at least 20 percent of the total costs of
17 the technical assistance for which such grants and
18 services are made. The President may waive the 20
19 percent contribution requirement if the grants or
20 services recipient demonstrates financial need, and
21 such waiver is necessary to facilitate public partici-
22 pation in the selection of remedial action at the fa-
23 cility. Not more than one award or grants or serv-
24 ices may be made with respect to a single facility,
25 but the grants or services may be renewed to facili-

1 tate public participation at all stages of remedial ac-
2 tion.”.

3 (c) Section 117 of the Act (42 U.S.C. 9617) is
4 amended by adding after subsection (e) the following new
5 subsection:

6 “(f) EARLY, DIRECT AND MEANINGFUL COMMUNITY
7 INVOLVEMENT.—The President shall provide for early, di-
8 rect and meaningful community involvement in each sig-
9 nificant phase of response activities taken under this Act.
10 The President shall provide the community with access to
11 information necessary to develop meaningful comments on
12 critical decisions regarding facility characterization, risks
13 posed by the facility, and selection of removal and reme-
14 dial actions. The President shall consider the views, pref-
15 erences and recommendations of the affected community
16 regarding all aspects of the response activities, including
17 the acceptability to the community of achieving back-
18 ground levels.

19 “(g) INFORMATION TO BE DISSEMINATED.—In addi-
20 tion to other information the President considers appro-
21 priate, the President shall ensure that the community is
22 provided information on the following:

23 “(1) The availability of a Technical Assistance
24 Grant (TAG) under subsection (e), directions on

1 completing the TAG application, and the details of
2 the application process.

3 “(2) The possibility (where relevant) that mem-
4 bers of a community may qualify to receive an alter-
5 native water supply or relocation assistance.

6 “(3) The Superfund process, and rights of pri-
7 vate citizens and public interest or community
8 groups.

9 “(4) The potential for or existence of a Commu-
10 nity Working Group (CWG) established under sub-
11 section (i) (as added by the Superfund Reform Act
12 of 1994).

13 “(5) An objective description of the facility’s lo-
14 cation and characteristics, the contaminants present,
15 the known exposure pathways, and the steps being
16 taken to assess the risk presented by the facility.

17 “(h) PROCESS FOR INVOLVEMENT.—As early as
18 practicable after site discovery, the President shall provide
19 regular, direct, and meaningful community involvement in
20 all phases of the response activities at the facility, includ-
21 ing the following:

22 “(1) SITE ASSESSMENT.—Whenever practicable,
23 during the site assessment, the President shall solicit
24 and evaluate the concerns and interests of the com-
25 munity likely affected by the facility. The evaluation

1 may consist of face-to-face community surveys, a
2 minimum of one public meeting, written responses to
3 significant concerns, and other appropriate
4 participatory activities.

5 “(2) REMEDIAL INVESTIGATION/FEASIBILITY
6 STUDY.—During the remedial investigation and fea-
7 sibility study, the President shall solicit the views
8 and preferences of the community on the remedi-
9 ation and disposition of the hazardous substances,
10 pollutants or contaminants at the site. The commu-
11 nity’s views and preferences shall be described in the
12 remedial investigation and feasibility study and con-
13 sidered in the development of remedial alternatives
14 for the facility.”.

15 **SEC. 103. COMMUNITY WORKING GROUPS.**

16 Section 117 of the Act (42 U.S.C. 9617) is amended
17 by adding after subsection (h) (as added by this Act) the
18 following new subsection:

19 “(i) COMMUNITY WORKING GROUPS.—

20 “(1) CREATION AND RESPONSIBILITIES.—The
21 President shall provide the opportunity to establish
22 a representative public forum, known as a Commu-
23 nity Working Group (CWG), to achieve direct, regu-
24 lar and meaningful consultation with community
25 members throughout all stages of a response action.

1 The President shall consult with the CWG at each
2 significant phase of the remedial process.

3 “(2) INFORMATION CLEARINGHOUSE.—The
4 CWG shall serve as a facility information clearing-
5 house for the community. In addition to maintaining
6 records of facility status and lists of active citizen
7 groups and available experts, the CWG shall also be
8 a repository for health assessment information and
9 other related health data.

10 “(3) LAND USE RECOMMENDATIONS.—To es-
11 tablish land use expectations more reliably, and ob-
12 tain greater community support for remedial deci-
13 sions affecting future land use, the President shall
14 consult with the CWG on a regular basis throughout
15 the remedy selection process regarding reasonably
16 anticipated future use of land at the facility. The
17 CWG may offer recommendations to the President
18 at any time during the response activities at the fa-
19 cility on the reasonably anticipated future use of
20 land at the facility, taking into account development
21 possibilities and future waste management needs.
22 The President shall not be bound by any rec-
23 ommendation of the CWG. However, when the CWG
24 achieves substantial agreement on the reasonably
25 anticipated future use of the land at the facility, the

1 President shall give substantial weight to that rec-
2 ommendation. In cases where there is substantive
3 disagreement within the CWG over a recommenda-
4 tion regarding the reasonably anticipated future use
5 of land at the facility, the President shall seek to
6 reconcile the differences. In the event of continued
7 substantive disagreement, substantial weight shall be
8 given to the views of the residents of the affected
9 community. Should the President make a determina-
10 tion that is inconsistent with a CWG recommenda-
11 tion on the reasonably anticipated future use of land
12 at the facility, the President shall issue a written
13 reason for the inconsistency.

14 “(4) MEMBERS.—CWG membership shall not
15 exceed twenty persons. CWG members shall serve
16 without pay. Nominations for CWG membership
17 shall be solicited and accepted by the President. Se-
18 lection of CWG members shall be made by the Presi-
19 dent. In selecting citizen participants for the CWG,
20 the President shall provide notice and an oppor-
21 tunity to participate in CWG’s to persons who po-
22 tentially are affected by facility contamination in the
23 community. Special efforts shall be made to ensure
24 that the composition of CWG’s reflects a balanced
25 representation of all those interested in facility re-

1 mediation. In general, it shall be appropriate for the
2 President to offer members of the following groups
3 representation on a CWG:

4 “(A) Residents and/or landowners who live
5 on or have property immediately adjacent to or
6 near the facility, or who may be directly af-
7 fected by releases from the facility, with a mini-
8 mum of one representative of the recipient a
9 grant for technical assistance, if any, awarded
10 under subsection (e).

11 “(B) Persons who, although not physically
12 as close to the facility as those in the group
13 identified in subparagraph (A), may be poten-
14 tially affected by releases from the facility.

15 “(C) Members of the local medical commu-
16 nity who have resided in the community for at
17 least five years.

18 “(D) Representatives of Indian tribes.

19 “(E) Representatives of citizen, environ-
20 mental or public interest groups with members
21 residing in the community.

22 “(F) Local government officials.

23 “(G) Workers at the facility who will be in-
24 volved in actual cleanup operations.

1 “(H) Persons at the facility during re-
2 sponse actions.

3 “(I) Facility owners and the significant
4 PRP’s who, whenever practicable, represent a
5 balance of interests.

6 “(J) Members of the local business com-
7 munity.

8 “(5) OTHER COMMUNITY VIEWS.—The exist-
9 ence of a CWG shall not affect or diminish any
10 other obligation of the President to consider the
11 views of any person in selecting response actions
12 under this Act.”.

13 **SEC. 104. CITIZEN INFORMATION AND ACCESS OFFICES.**

14 Section 117 of the Act (42 U.S.C. 9617) is amended
15 by adding after subsection (i) (as added by this Act) the
16 following new subsection:

17 “(j) CITIZEN INFORMATION AND ACCESS OFFICES.—

18 “(1) CREATION AND RESPONSIBILITIES.—The
19 Administrator shall ensure that an independent Citi-
20 zen Information and Access Office (CIAO) is estab-
21 lished in each State and on each tribal land affected
22 by a National Priorities List facility.

23 “(2) PRIMARY FUNCTIONS.—The primary func-
24 tions of each CIAO shall be to—

1 “(A) inform citizens and elected officials at
2 all levels of government of the existence and
3 status of National Priorities List facilities in
4 the State;

5 “(B) provide citizens with information
6 about each phase of the Superfund process, in-
7 cluding the site identification, assessment and
8 cleanup phases;

9 “(C) ensure wide distribution of informa-
10 tion that is easily understood by citizens;

11 “(D) serve as a statewide, or tribal land-
12 wide clearinghouse of information; and

13 “(E) assist in the Administrator’s efforts
14 to notify, nominate, and select potential Com-
15 munity Working Group members.”.

16 **SEC. 105. RESPONSE TO COMMENTS.**

17 Section 117(a) (42 U.S.C. 9617(a)) of the Act is
18 amended by striking “both of” from the phrase imme-
19 diately preceding paragraph (1) and by inserting after
20 paragraph (2) the following new paragraph:

21 “(3) Consider the recommendations of any
22 Community Working Group, community members
23 and Technical Assistance Grant recipients estab-
24 lished for the facility pursuant to this section. Pro-
25 vide, in writing a response to each significant com-

1 ment received during the public comment period.
2 The written response shall include an explanation of
3 how the lead agency has used or rejected significant
4 comments of the Community Working Group in its
5 final decision.”.

6 **SEC. 106. MULTIPLE SOURCES OF RISK DEMONSTRATION**
7 **PROJECTS.**

8 Section 117 of the Act (42 U.S.C. 9617) is amended
9 by adding after subsection (j) (as added by this Act) the
10 following new subsection:

11 “(k) MULTIPLE SOURCES OF RISK DEMONSTRATION
12 PROJECTS.—

13 “(1) IN GENERAL.—The Administrator shall se-
14 lect at least 10 demonstration projects to be imple-
15 mented over a five-year period, relating to the identi-
16 fication, assessment, management of, and response
17 to, multiple sources of risk in and around designated
18 facilities. These demonstration projects will examine
19 various approaches to protect communities exposed
20 to such multiple sources of risk. The Administrator
21 shall promulgate regulations that set forth the cri-
22 teria by which demonstration projects will be se-
23 lected.

24 “(2) ADDITIONAL HEALTH BENEFITS.—In the
25 course of conducting these demonstration projects, if

1 a distinct pattern of adverse health effects is identi-
2 fied in the surrounding community, the Adminis-
3 trator shall consider the provision of additional
4 health benefits to the affected community, in an ef-
5 fort to improve community health and welfare. Addi-
6 tional benefits may include services such as consulta-
7 tions on health information and health screening,
8 the kind and availability of which will be set forth
9 in regulations promulgated by the Administrator.
10 These benefits shall not duplicate any activities al-
11 ready undertaken at those facilities by the Agency
12 for Toxic Substances and Disease Registry under
13 section 104(i) of this Act.

14 “(3) MULTIPLE SOURCES OF RISK.—For the
15 purposes of this section, the term ‘multiple sources
16 of risk’ means—

17 “(A) health risks from the existence of and
18 exposure to hazardous substances in the vicinity
19 of a facility for which a response action under
20 this Act is considered, which may present risks
21 to persons who are also at risk due to condi-
22 tions at such a facility; or

23 “(B) health risks from releases or threat-
24 ened releases of a hazardous substance, pollut-
25 ant or contaminant from facilities, permitted or

1 otherwise, in the vicinity of a facility for which
2 a response action under this Act is being con-
3 sidered, which may present risks to persons who
4 are also at risk due to the specific facility for
5 which a response action is being considered.

6 “(4) CONSISTENCY WITH DESIGNATION OF
7 EMPOWERMENT ZONES.—The Administrator shall,
8 to the maximum extent practicable, select locations
9 for conducting demonstration projects under this
10 subsection that coincide with areas which have been
11 identified as empowerment zones under the Omnibus
12 Budget Reconciliation Act of 1994 (Public Law
13 103–66).

14 “(5) RIGHT TO PETITION.—Any person may pe-
15 tition the Administrator to conduct a demonstration
16 project under this subsection at a specified location.
17 Without regard to paragraph (4), the Administrator
18 may grant such a petition if—

19 “(A) the petition sets out a reasonable
20 basis in fact that the population residing in the
21 vicinity of the specified location may be exposed
22 to multiple sources of risk as described in para-
23 graph (3); and

24 “(B) the petition otherwise meets the re-
25 quirements of regulations promulgated by the

1 Administrator which set forth the criteria by
2 which demonstration projects will be selected.

3 “(6) REVIEWS OF PETITIONS.—The
4 Administrator’s determination and reviews of peti-
5 tions under this subsection are committed to the Ad-
6 ministrator’s unreviewable discretion.

7 “(7) INTERAGENCY COORDINATION.—The Ad-
8 ministrator shall coordinate with other departments
9 or agencies as necessary in carrying out the respon-
10 sibilities of this subsection.”.

11 **SEC. 107. ASSESSING RISKS FROM MULTIPLE SOURCES.**

12 Section 105(a) of the Act (42 U.S.C. 9605(a)) is
13 amended by adding after paragraph (10) the following
14 new paragraph:

15 “(11) standards and procedures for assessing
16 the risks, and the cumulative impact of such risks,
17 posed by the release or threatened release of hazard-
18 ous substances, or pollutants, or contaminants from
19 multiple sources of risk (as described in section
20 117(l)(3) of this Act) in and around a facility, for
21 utilization in response actions authorized by this
22 Act. The demonstration projects authorized under
23 subsection 117(l) of this Act shall be used to help
24 meet the requirements of this subsection.”.

1 **SEC. 108. MULTIPLE SOURCES OF RISK IN PRIORITY SET-**
2 **TING.**

3 Section 105(a)(8)(A) of the Act (42 U.S.C.
4 9605(a)(8)(A)) is amended by adding in the last sentence
5 before “and other appropriate factors” the following: “the
6 presence of multiple sources of risk (described in section
7 117(l)(3) of this Act) to affected communities,”.

8 **SEC. 109. DISEASE REGISTRY AND MEDICAL CARE PROVID-**
9 **ERS.**

10 Section 104(i)(1) of the Act (42 U.S.C. 9604(i)(1))
11 is amended—

12 (a) by amending subparagraph (A) to read as
13 follows:

14 “(A) in cooperation with the States, for sci-
15 entific purposes and public health purposes, estab-
16 lish and maintain a national registry of persons ex-
17 posed to toxic substances;” and

18 (b) by amending subparagraph (E) by striking
19 “admissions to hospitals and other facilities and
20 services operated or provided by the Public Health
21 Service” and by inserting “referral to accredited
22 medical care providers”.

23 **SEC. 110. SUBSTANCE PROFILES.**

24 Section 104(i)(3) of the Act (42 U.S.C. 9604(i)(3))
25 is amended by amending the paragraph beginning “Any
26 toxicological profile or revision thereof” to read as follows:

1 “Any toxicological profile or revision thereof shall reflect
2 the Administrator of ATSDR’s assessment of all relevant
3 toxicological testing which has been peer reviewed. The
4 profiles prepared under this paragraph shall be for those
5 substances highest on the list of priorities under para-
6 graph (2) for which profiles have not previously been pre-
7 pared or for substances not on the listing but which have
8 been found at non-National Priorities List facilities and
9 which have been determined by ATSDR to be of critical
10 health concern. Profiles required under this paragraph
11 shall be revised and republished as necessary, based on
12 scientific need. Such profiles shall be provided to the
13 States and made available to other interested parties.”.

14 **SEC. 111. DETERMINING HEALTH EFFECTS.**

15 Section 104(i)(5) of the Act (42 U.S.C. 9604(i)(5))
16 is amended—

17 (a) in subparagraph (A) by—

18 (1) striking “designed to determine the
19 health effects (and techniques for development
20 of methods to determine such health effects) of
21 such substance” and inserting—“conducted di-
22 rectly or by means such as cooperative agree-
23 ments and grants with appropriate public and
24 nonprofit institutions. The research shall be de-
25 signed to determine the health effects (and

1 techniques for development of methods to deter-
2 mine such health effects) of the substance”;
3 and

4 (2) redesignating clause (iv) as “(v)”,
5 striking “and” after clause (iii), and by insert-
6 ing a new clause (iv) to read as follows:

7 “(iv) laboratory and other studies
8 which can lead to the development of inno-
9 vative techniques for predicting organ-spe-
10 cific, site-specific, and system-specific
11 acute and chronic toxicity; and”;

12 (b) striking subparagraph (D).

13 **SEC. 112. PUBLIC HEALTH AND RELATED HEALTH ACTIVI-**
14 **TIES AT NPL FACILITIES.**

15 Section 104(i)(6) of the Act (42 U.S.C. 9604(i)(6))
16 is amended by—

17 (a) amending subparagraph (A) to read as fol-
18 lows:

19 “(A) The Administrator of ATSDR shall perform a
20 public health assessment or related health activity for each
21 facility on the National Priorities List established under
22 section 105 of this Act. The public health assessment or
23 related health activity shall be completed for each facility
24 proposed for inclusion on the National Priorities List not
25 later than one year after the date of proposal for inclusion,

1 including those facilities owned by any department, agen-
2 cy, or instrumentality of the United States.”; and

3 (b) in subparagraph (H), striking “health as-
4 sessment” and “such assessment” each place that
5 they appear and inserting “public health assessment
6 or related health activity”.

7 **SEC. 113. HEALTH STUDIES.**

8 Section 104(i)(7)(A) of the Act (42 U.S.C.
9 9604(i)(7)(A)) is amended to read as follows:

10 “(A) Whenever in the judgment of the Administrator
11 of ATSDR it is appropriate on the basis of the results
12 of a public health assessment or on the basis of other ap-
13 propriate information, the Administrator of ATSDR shall
14 conduct a human health study of exposure or other health
15 effects for selected groups or individuals in order to deter-
16 mine the desirability of conducting full scale epidemiologic
17 or other health studies of the entire exposed population.”.

18 **SEC. 114. DISTRIBUTION OF MATERIALS TO HEALTH PRO-**
19 **FESSIONALS AND MEDICAL CENTERS.**

20 Section 104(i)(14) of the Act (42 U.S.C. 9604(i)(14))
21 is amended to read as follows:

22 “(14) In implementing this subsection and other
23 health-related provisions of this Act in cooperation with
24 the States, the Administrator of ATSDR shall—

1 “(A) assemble, develop as necessary, and dis-
2 tribute to the States, medical colleges, physicians,
3 nursing institutions, nurses, and other health profes-
4 sionals and medical centers, appropriate educational
5 materials (including short courses) on the medical
6 surveillance, screening, and methods of prevention,
7 diagnosis and treatment of injury or disease related
8 to exposure to hazardous substances (giving priority
9 to those listed in paragraph (2)), through means the
10 Administrator of ATSDR considers appropriate; and

11 “(B) assemble, develop as necessary, and dis-
12 tribute to the general public and to at-risk popu-
13 lations appropriate educational materials and other
14 information on human health effects of hazardous
15 substances.”.

16 **SEC. 115. GRANT AWARDS/CONTRACTS/COMMUNITY ASSIST-**
17 **ANCE ACTIVITIES.**

18 Section 104(i)(15) of the Act (42 U.S.C.
19 6904)(i)(15)) is amended by—

- 20 (a) inserting “(A)” before “The activities”;
- 21 (b) striking “cooperative agreements with
22 States (or political subdivisions thereof)” and insert-
23 ing “grants, cooperative agreements, or contracts
24 with States (or political subdivisions thereof), other
25 appropriate public authorities, public or private in-

1 stitutions, colleges, and universities, and professional
2 associations,”;

3 (c) in the second sentence, inserting “public”
4 before “health assessments”; and

5 (d) adding a new subparagraph as follows:

6 “(B) When a public health assessment or related
7 health activity is conducted at a facility on, or a release
8 being evaluated for inclusion on the National Priorities
9 List, the Administrator of ATSDR may provide the assist-
10 ance specified in this paragraph to public or private non-
11 profit entities, individuals, and community-based groups
12 who may be affected by the release or threatened release
13 of hazardous substances in the environment.”.

14 **SEC. 116. PUBLIC HEALTH RECOMMENDATIONS IN REME-**
15 **DIAL ACTIONS.**

16 Section 121(c) of the Act (42 U.S.C. 9621(c)) is
17 amended by inserting after the phrase “remedial action”
18 the second time it appears the following: “, including pub-
19 lic health recommendations and decisions resulting from
20 activities under section 104(i),”.

21 **SEC. 117. ATSDR NOTIFICATION.**

22 Section 122 of the Act (42 U.S.C. 9622) is amended
23 by inserting after subsection (m) the following new sub-
24 section:

1 “(n) NOTIFICATION OF ATSDR.—When the Agency
2 for Toxic Substances and Disease Registry (ATSDR) has
3 conducted health related response activities pursuant to
4 section 104(i) in response to a release or threatened re-
5 lease of any hazardous substance that is the subject of
6 negotiations under this section, the President shall notify
7 ATSDR of the negotiations and shall encourage the par-
8 ticipation of ATSDR in the negotiations.”.

9 **TITLE II—STATE ROLES**

10 **SEC. 201. STATE AUTHORITY.**

11 (a) Title I of the Act (42 U.S.C. 9600 et seq.) is
12 amended by adding after section 126 the following new
13 section:

14 **“§ 127. State authority**

15 “(a) STATE PROGRAM AUTHORIZATION.—

16 “(1) IN GENERAL.—At any time after the pro-
17 mulgation of the criteria required by paragraph (3)
18 of this subsection, a State may apply to the Admin-
19 istrator to carry out, under its own legal authorities,
20 response actions and enforcement activities at all fa-
21 cilities listed or proposed for listing on the National
22 Priorities List, or certain categories of facilities list-
23 ed or proposed for listing on the National Priorities
24 List, within the State. This section shall not apply
25 to any facility owned or operated by a department,

1 agency, or instrumentality of the United States list-
2 ed on the National Priorities List if, on the date of
3 enactment of the Superfund Reform Act of 1994, an
4 interagency agreement for such facility has been en-
5 tered into pursuant to section 120(a)(2).

6 “(2) REQUIREMENTS FOR AUTHORIZATION.—If
7 the Administrator determines that the State pos-
8 sesses the legal authority, technical capability, and
9 resources necessary to conduct response actions and
10 enforcement activities in a manner that is substan-
11 tially consistent with this Act and the National Con-
12 tingency Plan at the facilities listed or proposed for
13 listing on the National Priorities List for which it
14 seeks authorization, the Administrator, pursuant to
15 a contract or agreement entered into between the
16 Administrator and the State, may authorize the
17 State to assume the responsibilities established
18 under this Act at all such facilities or categories of
19 facilities. Except as otherwise provided in this Act,
20 such responsibilities include, but are not limited to,
21 responding to a release or threatened release of a
22 hazardous substance or pollutant or contaminant;
23 selecting response actions; expending the Fund in
24 amounts authorized by the Administrator to finance
25 response activities; and taking enforcement actions,

1 including cost recovery actions to recover Fund ex-
2 penditures made by the State. In an application for
3 authorization, a State shall acknowledge its respon-
4 sibility to address all response actions at the facili-
5 ties for which it seeks authorization.

6 “(3) PROMULGATION OF REGULATIONS.—The
7 Administrator shall issue regulations to determine a
8 State’s eligibility for authorization and establish a
9 process and criteria for withdrawal of such an au-
10 thorization. At a minimum, a State must dem-
11 onstrate—

12 “(A) that it has a process for allocating li-
13 ability among potentially responsible parties
14 that is substantially consistent with section
15 122a of this Act (as added by the Superfund
16 Reform Act of 1994);

17 “(B) that it provides for public participa-
18 tion in a manner that is substantially consistent
19 with section 117 of this Act and the National
20 Contingency Plan;

21 “(C) that it provides for selection and con-
22 duct of response actions in a manner that is
23 substantially consistent with section 121 of this
24 Act; and

1 “(D) that it provides for notification of
2 and coordination with trustees in a manner that
3 is substantially consistent with section
4 104(b)(2) and section 122(j)(1) of this Act.

5 “(b) REFERRAL OF RESPONSIBILITIES.—

6 “(1) IN GENERAL.—At any time after the pro-
7 mulgation of the criteria required by paragraph (3)
8 of this subsection, a State may apply to the Admin-
9 istrator to carry out, under its own legal authorities,
10 response actions at a specific facility or facilities list-
11 ed or proposed for listing on the National Priorities
12 List, within the State.

13 “(2) REQUIREMENTS FOR REFERRAL.—If the
14 Administrator determines that the State possesses
15 the legal authority, technical capability, and re-
16 sources necessary to conduct response actions and
17 enforcement activities in a manner substantially con-
18 sistent with this Act and the National Contingency
19 Plan at the facilities listed or proposed for listing on
20 the National Priorities List facilities for which it
21 seeks referral, the Administrator, pursuant to a con-
22 tract or agreement entered into between the Admin-
23 istrator and the State, may refer the responsibilities
24 established under this Act to the State for the facili-
25 ties for which the State seeks referral. Except as

1 otherwise provided in this Act, such responsibilities
2 include, but are not limited to, responding to a re-
3 lease or threatened release of a hazardous substance
4 or pollutant or contaminant; selecting response ac-
5 tions; expending the Fund in amounts authorized by
6 the Administrator to finance response activities; and
7 taking enforcement actions, including cost recovery
8 actions to recover Fund expenditures made by the
9 State.

10 “(3) PROMULGATION OF REGULATIONS.—The
11 Administrator shall promulgate regulations to deter-
12 mine a State’s eligibility for referral and establish a
13 process and criteria for withdrawal of such referral.
14 At a minimum, a State must demonstrate that it
15 meets the requirements described in subsection
16 (a)(3).

17 “(c) AUTHORIZED USE OF FUND.—At facilities listed
18 on the National Priorities List for which a State is author-
19 ized under subsection (a), and at facilities listed on the
20 National Priorities List which are referred to a State
21 under subsection (b), the State shall be eligible for re-
22 sponse action financing from the Fund. The Administrator
23 shall ensure that all allocations of the Fund to the States
24 for the purpose of undertaking site-specific response ac-
25 tions are based primarily on the relative risks to human

1 health and the environment posed by the facilities eligible
2 for funding. The amount of Fund financing for a State-
3 selected response action at a facility listed on the National
4 Priorities List shall—

5 “(1) take into account the number and financial
6 viability of parties identified as potentially liable for
7 response costs at such facility, and

8 “(2) be limited to the amount necessary to
9 achieve a level of response that is not more stringent
10 than that required under this Act.

11 A State also may obtain Fund financing to develop and
12 enhance its capacity to undertake response actions and en-
13 forcement activities. The Administrator shall establish
14 specific criteria for allocating expenditures from the Fund
15 among States for the purposes of undertaking response
16 actions and enforcement activities at referred and State-
17 authorized facilities, and building State capacities to un-
18 dertake such response actions and enforcement activities.
19 The Administrator shall develop a program and provide
20 an appropriate level of Fund financing to assist Indian
21 tribes in developing and enhancing their capabilities to
22 conduct response actions and enforcement activities.

23 “(d) STATE COST SHARE.—As provided in section
24 104(c)(3)(B) of this Act (as added by the Superfund Re-
25 form Act of 1994), a State shall pay or assure payment

1 of 15 percent of the costs of all response actions and pro-
2 gram support or other costs for which the State receives
3 funds from the Fund under this section. An Indian tribe
4 authorized to conduct response actions and enforcement
5 activities or to which facilities have been referred under
6 this section is not subject to the cost-share requirement
7 of this subsection.

8 “(e) TERMS AND CONDITIONS; COST RECOVERY.—
9 A contract or agreement for a State authorization or refer-
10 ral under this section is subject to such terms and condi-
11 tions as the Administrator prescribes. The terms and con-
12 ditions shall include requirements for periodic auditing
13 and reporting of State expenditures from the Fund. The
14 contract or agreement may cover a specific facility, a cat-
15 egory of facilities, or all facilities listed or proposed to be
16 listed on the National Priorities List in the State. The
17 contract or agreement shall require the State to seek cost
18 recovery, as contemplated by this Act, of all expenditures
19 from the Fund. Five percent of the moneys recovered by
20 the State may be retained by the State for use in its haz-
21 ardous substance response program, and the remainder
22 shall be returned to the Fund. Before making further allo-
23 cations from the Fund to any State, the Administrator
24 shall take into consideration the effectiveness of the
25 State’s enforcement program and cost recovery efforts.

1 “(f) ENFORCEMENT OF AGREEMENTS.—If the Ad-
2 ministrator enters into a contract or agreement with a
3 State pursuant to this section, and the State fails to com-
4 ply with any terms and conditions of the contract or agree-
5 ment, the Administrator, after providing sixty days notice,
6 may withdraw the State authorization or referral, or seek
7 in the appropriate Federal district court to enforce the
8 contract or agreement to recover any funds advanced or
9 any costs incurred because of the breach of the contract
10 or agreement by the State.

11 “(g) MORE STRINGENT STATE STANDARDS.—Under
12 either an authorization or referral, a State may select a
13 response action that achieves a level of cleanup that is
14 more stringent than required under section 121(d) of this
15 Act if the State agrees to pay for the incremental increase
16 in response cost attributable to achieving the more strin-
17 gent cleanup level. Neither the Fund nor any party liable
18 for response costs shall incur costs in excess of those nec-
19 essary to achieve a level of cleanup required under section
20 121(d) of this Act.

21 “(h) OPPORTUNITY FOR PUBLIC COMMENT.—The
22 Administrator shall make available, for public review and
23 comment, applications for authorization under subsection
24 (a) and applications for referral under subsection (b). The
25 Administrator shall not approve or withdraw authorization

1 or referral from a State unless the Administrator notifies
2 the State, and makes public, in writing, the reasons for
3 such approval or withdrawal.

4 “(i) PERIODIC REVIEW OF AUTHORIZED STATE PRO-
5 GRAMS AND REFERRALS.—The Administrator shall con-
6 duct a periodic review of authorized State programs and
7 referrals to determine, among other things, whether—

8 “(1) the response actions were selected and con-
9 ducted in a manner that was substantially consistent
10 with this Act, the National Contingency Plan, and
11 the contract or agreement between the Adminis-
12 trator and the State;

13 “(2) the State response costs financed by Fund
14 expenditures were incurred in the manner agreed to
15 by the State, in accordance with the contract or
16 agreement between the Administrator and the State;
17 and

18 “(3) the State’s cost recovery efforts and other
19 enforcement efforts were conducted in accordance
20 with the contract or agreement between the Admin-
21 istrator and the State.

22 The Administrator, in consultation with the States, shall
23 develop specific criteria for periodic reviews of authorized
24 State programs and referrals. The Administrator shall es-

1 establish a mechanism to make the periodic State reviews
2 available to the public.

3 “(j) MODIFICATION OF RESPONSE.—At a facility for
4 which a State selects a response action under an author-
5 ization or a referral, the State shall afford the opportunity
6 for public participation in a manner that is substantially
7 consistent with the requirements of section 117(f)–(i) of
8 this Act, and shall give notice of and a copy of the pro-
9 posed plan for response action to the Administrator. The
10 State also shall give prompt written notice and a copy of
11 the final decision in selecting the response action to the
12 Administrator. Within 90 days from the date of receipt
13 of such notice and final response action decision from the
14 State, the Administrator may issue a notice of a request
15 to modify the State-selected remedy. The Administrator’s
16 notice shall be in writing and shall set forth the basis for
17 the Administrator’s position, and the final date for re-
18 sponding to the Administrator’s request, which shall be
19 no less than 90 days from the date of the notice. If the
20 State’s response does not resolve the Administrator’s con-
21 cerns to the Administrator’s satisfaction, the Adminis-
22 trator may withhold the distribution of Fund monies for
23 the selected response action or may withdraw all or part
24 of the State’s authorization or referral.

1 “(k) EFFECT OF SECTION.—The President shall re-
2 tain the authority to take response actions at facilities list-
3 ed or proposed for listing on the National Priorities List
4 that are not being addressed by a State under an author-
5 ization or referral pursuant to this section. At facilities
6 listed or proposed for listing on the National Priorities
7 List that are being addressed by a State under either an
8 authorization or a referral, the President may take re-
9 sponse actions that the President determines necessary to
10 protect human health or the environment, if the State
11 fails, after a request by the Administrator to take such
12 response actions in a timely manner. A State does not
13 have the authority, except pursuant to this section, to take
14 or order a response action, or any other action relating
15 to releases or threatened releases, at any facility listed or
16 proposed for listing on the National Priorities List. This
17 section does not affect the authority of the United States
18 under this Act to seek cost recovery for costs incurred by
19 the United States.”.

20 (b) TRANSITION AND CONFORMING AMENDMENTS.—

21 (1) Sections 104(c)(5), 104(c)(7), 104(d)(1),
22 and 104(d)(2) of the Act are each amended by in-
23 serting after the heading in each paragraph the fol-
24 lowing—“This paragraph applies only to response
25 actions for which a Record of Decision or other deci-

1 sion document is signed before the date of enact-
2 ment of the Superfund Reform Act of 1994 and re-
3 sponse actions covered by a contract or agreement
4 for which a State has selected, pursuant to the op-
5 tion provided in subsection (c)(3)(C) (as added by
6 the Superfund Reform Act of 1994), the funding re-
7 quirements set forth in subsection (c)(3)(A) (as
8 amended by Superfund Reform Act of 1994).”;

9 (2) Section 114(a) of the Act is amended by
10 striking “Nothing” and inserting—“Except as other-
11 wise provided in this Act, nothing”;

12 (3) Section 121(f)(1) of the Act is amended by
13 striking the existing provisions and inserting—“The
14 President may repeal, no earlier than one year after
15 the promulgation of final regulations under sections
16 127(a)(3) and 127(b)(3), the regulations issued
17 under this paragraph prior to the date of enactment
18 of the Superfund Reform Act of 1994.”;

19 (4) Section 121(f)(2) of the Act is amended
20 by—

21 (A) striking “legally applicable or relevant
22 and appropriate” from the second sentence of
23 subparagraph (A); and

1 (B) striking “subsection (d)(4)” from the
2 second sentence of subparagraph (A) and in-
3 serting “subsection (d)(5)(C)”;

4 (5) Section 121(f)(3) of the Act is amended
5 by—

6 (A) striking “legally applicable or relevant
7 and appropriate” from the second sentence of
8 subparagraph (A); and

9 (B) striking “subsection (d)(4)” from the
10 second sentence of subparagraph (A) and in-
11 serting “subsection (d)(5)(C)”.

12 (6) Section 302(d) of the Act is amended by
13 striking “Nothing” and inserting—“Except as other-
14 wise provided in this Act, nothing”.

15 **SEC. 202. TRANSFER OF AUTHORITIES.**

16 Section 120(g) of the Act (42 U.S.C. 9620(g)) is
17 amended by adding, after “the Environmental Protection
18 Agency,” the phrase “and except as provided in section
19 127,”.

20 **SEC. 203. STATE ROLE IN DETERMINATION OF REMEDIAL**
21 **ACTION TAKEN.**

22 Section 120(h)(3) of the Act (42 U.S.C. 9620(h)(3))
23 is amended by adding at the end thereof the following:
24 “If the property being transferred is part of a facility sub-
25 ject to a State authorization or a referral under section

1 127, all demonstrations required by this paragraph to be
2 made to the Administrator shall be made to the appro-
3 priate State official.”.

4 **SEC. 204. STATE ASSURANCES.**

5 Section 104(c)(3) of the Act (42 U.S.C. 9604(c)(3))
6 is amended by—

7 (a) in the beginning of the paragraph after
8 “(3)” inserting “State cost shares for response ac-
9 tions and programs for which Superfund funds may
10 be allocated under this section or section 127 shall
11 be as follows—”;

12 (b) striking “The” before “President” and in-
13 serting “(A) For all remedial actions for which a
14 Record of Decision is signed before the date of en-
15 actment of the Superfund Reform Act of 1994, the”;

16 (c) redesignating subparagraphs (A), (B) and
17 (C) of existing section 104(c)(3) as subparagraphs
18 (1), (2) and (3) respectively; by striking “(i)”, wher-
19 ever it appears and inserting “(I)”; and striking
20 “(ii)” wherever it appears and inserting “(II)”;

21 (d) adding a new subparagraph (B) as follows:

22 “(B) Subject to the provisions of subparagraph (C),
23 for the costs of all response actions for which a Record
24 of Decision or other decision document is signed after the
25 date that is one year after the effective date of final regu-

1 lations promulgated under section 127(a)(3) and section
2 127(b)(3), and for all program or other costs for which
3 Fund money may be allocated to the State pursuant to
4 this section or section 127, the President shall not provide
5 or authorize funding from the Fund unless the State first
6 enters into a contract or agreement with the President
7 providing assurances deemed adequate by the President
8 that the State will pay or assure payment of 15 percent
9 of all such costs as required by section 127(d). The Ad-
10 ministrator may provide funding authorized under this
11 paragraph for a one-year or other period for all costs and
12 facilities in a State; in that event, the State cost share
13 requirement set forth above shall apply to all costs covered
14 by such period.”; and

15 (e) adding a new subparagraph (C) as follows:

16 “(C) Each State shall have the option of receiving
17 funding for all response action costs and program or other
18 costs for which funding is authorized under this section
19 or section 127 pursuant to either subparagraph (A) or
20 subparagraph (B) of this paragraph. The option selected
21 by the State shall apply to all contracts and agreements
22 signed pursuant to this section or section 127.”.

23 **SEC. 205. SITING.**

24 Section 104(c)(9) of the Act (42 U.S.C. 9604(c)(9))
25 is amended to read as follows:

1 “(9) SITING.—Effective one year after the date of en-
2 actment of the Superfund Reform Act of 1994, the Presi-
3 dent shall not provide any remedial actions pursuant to
4 this section unless the State in which the release occurs
5 submits a report describing its plans for adequate disposal
6 capacity for hazardous wastes, in accordance with guide-
7 lines issued by the Administrator.”.

8 **SEC. 206. THE NATIONAL PRIORITIES LIST.**

9 (a) Section 105(a)(8)(B) of the Act (42 U.S.C.
10 9605(a)(8)(B)) is amended by striking “as part of the
11 plan”, and by inserting before “Within” the sentence
12 “The National Priorities List, and any modifications to
13 the National Priorities List, may be adopted administra-
14 tively, and without rulemaking.”.

15 (b) Section 105(a)(8) of the Act (42 U.S.C.
16 9605(a)(8)) is amended by adding after subparagraph (B)
17 the following new subparagraph—

18 “(C) before determining that a facility is to be
19 listed on the National Priorities List, the Adminis-
20 trator shall publish a notice proposing the facility
21 for listing on the National Priorities List and shall
22 provide an opportunity for public document. Public
23 notice and opportunity for comment also shall be
24 provided before a decision by the Administrator to
25 remove a facility from the National Priorities List.

1 The Administrator shall establish a procedure under
2 which any person may request that a facility be con-
3 sidered for listing on, or removal from, the National
4 Priorities List. The Administrator has the sole dis-
5 cretion to list or remove a facility on the National
6 Priorities List.”.

7 **SEC. 207. THE STATE REGISTRY.**

8 Section 105(a)(8) of the Act (42 U.S.C. 9605(a)(8))
9 is amended by adding after subparagraph (C) (as added
10 by this Act) a new subparagraph—

11 (D) STATE REGISTRY.—Each State shall main-
12 tain and make available to the public a list of facili-
13 ties in the State that are believed to present a cur-
14 rent or potential hazard to human health or the en-
15 vironment due to the release or threatened release of
16 hazardous substances or pollutants or contaminants.
17 Each State, in consultation with the Administrator
18 and other appropriate federal agencies, shall prepare
19 such listing, and shall, on an annual basis, publish
20 the State Registry, specifying the governmental
21 agency addressing the facility, and whether the facil-
22 ity is on the National Priorities List.”.

23 **TITLE III—VOLUNTARY RESPONSE**

24 **SEC. 301. PURPOSES AND OBJECTIVES.**

25 The purposes and objectives of this title are to—

1 (a) significantly increase the pace of response
2 activities at contaminated sites by promoting and
3 encouraging the development and expansion of State
4 voluntary response programs, and

5 (b) benefit the public welfare by returning con-
6 taminated sites to economically productive uses.

7 **SEC. 302. STATE VOLUNTARY RESPONSE PROGRAM.**

8 Title I of the Act is amended by adding after section
9 127 (as added by this Act) the following new section—

10 **“§ 128. Voluntary response program**

11 “(a) IN GENERAL.—The Administrator shall estab-
12 lish a program to provide technical and other assistance
13 to the States to establish and expand voluntary response
14 programs.

15 “(b) VOLUNTARY RESPONSE PROGRAM.—The Ad-
16 ministrator shall assist States to establish and administer
17 a voluntary program that—

18 “(1) covers all eligible facilities, as defined in
19 subsection (c) of this section, within the State;

20 “(2) provides adequate opportunities for public
21 participation, including prior notice and opportunity
22 for comment, in selecting response actions;

23 “(3) provides opportunities for technical assist-
24 ance for voluntary response actions;

1 “(4) has the capability, through enforcement or
2 other mechanisms, of assuming the responsibility for
3 completing a response action if the current owner or
4 prospective purchaser fails or refuses to complete the
5 necessary response, including operation and maintenance; and

7 “(5) provides adequate oversight and has adequate enforcement authorities to ensure that voluntary response actions are completed in accordance with applicable Federal and State laws, including applicable permit requirements and any on-going operation and maintenance or long-term monitoring activities.

14 “(c) ELIGIBLE FACILITIES.—

15 “(1) Except as provided in paragraph 2 of this subsection, the term ‘eligible facility’ means a facility or portion of a facility where there has been a release or threat of release of a hazardous substance, pollutant, or contaminant into the environment.

21 “(2) The term ‘eligible facility’ does not include any of the following—

23 “(A) a facility at which a remedial investigation and feasibility study is underway, unless the Administrator, in consultation with the

1 State, determines that it is appropriate to allow
2 the response action at such a facility to proceed
3 under a voluntary response program;

4 “(B) a facility with respect to which a
5 Record of Decision has been issued under sec-
6 tion 104 of this Act;

7 “(C) a facility with respect to which a cor-
8 rective action permit condition or order has
9 been proposed, issued, modified, or amended to
10 require implementation of specific corrective
11 measures under section 3004(u), 3004(v), or
12 3008(h) of the Solid Waste Disposal Act (42
13 U.S.C. 6924(u), 6924(v), or 6928(h));

14 “(D) a land disposal unit with respect to
15 which a closure notification under subtitle C of
16 the Solid Waste Disposal Act (42 U.S.C. 6921
17 et seq.) has been submitted;

18 “(E) a facility with respect to which an ad-
19 ministrative or judicial order or decree concern-
20 ing the response action has been issued, sought,
21 or entered into by the United States under this
22 Act, the Solid Waste Disposal Act (42 U.S.C.
23 6901 et seq.), the Atomic Energy Act of 1954
24 (42 U.S.C. 2011 et seq.), the Federal Water
25 Pollution Control Act (33 U.S.C. 1251 et seq.),

1 the Toxic Substances Control Act (15 U.S.C.
2 2601 et seq.) or title XIV of the Public Health
3 Service Act, commonly known as the Safe
4 Drinking Water Act (42 U.S.C. 300(f) et seq.);
5 and

6 “(F) a facility at which assistance for re-
7 sponse activities may be obtained under subtitle
8 I of the Solid Waste Disposal Act (42 U.S.C.
9 6991 et seq.) from the Leaking Underground
10 Storage Tank Trust Fund established under
11 section 9508 of the Internal Revenue Code of
12 1986.

13 “(3) A facility listed or proposed for listing on
14 the National Priorities List may be an ‘eligible facil-
15 ity’ if—

16 “(A) the facility is not a facility identified
17 in paragraph (2);

18 “(B) the State in which the facility is lo-
19 cated has obtained a State authorization or re-
20 ferral under section 127 of this Act; and

21 “(C) the Administrator concurs in the
22 State’s determination to address the facility
23 under its voluntary response program.

24 “(d) ANNUAL REPORTING.—The Administrator shall
25 report, not later than 1 year after enactment of this Act

1 and annually thereafter, to the Congress on the status of
2 State voluntary response programs including—

3 “(1) whether the State’s voluntary response
4 program continues to meet the criteria set forth in
5 subsection (b) or (c);

6 “(2) whether the State has adopted procedures
7 to ensure that all response actions completed or un-
8 dertaken under the State’s voluntary response pro-
9 gram comply with all applicable Federal and State
10 laws;

11 “(3) whether public participation opportunities
12 have been adequate during the process of selecting
13 a response action for each voluntary response;

14 “(4) whether voluntary response actions com-
15 pleted or undertaken under the State voluntary re-
16 sponse program have been implemented in a manner
17 that has reduced or eliminated risks to human
18 health and the environment to the satisfaction of the
19 State;

20 “(5) whether voluntary response actions com-
21 pleted or undertaken under the State voluntary re-
22 sponse program at facilities listed or proposed for
23 listing on the National Priorities List were con-
24 ducted in accordance with section 121(d) of this Act;
25 and

1 “(6) whether a voluntary response action has
2 increased risk to human health or the environment,
3 and whether a State has taken timely and appro-
4 priate steps to reduce or eliminate that risk to
5 human health or the environment.

6 “(i) STATUTORY CONSTRUCTION.—This section is
7 not intended—

8 “(1) to impose any requirement on a State vol-
9 untary response program existing on or after the
10 date of enactment of this Act; or

11 “(2) to affect the liability of any person or re-
12 sponse authorities afforded under any law (including
13 any regulation) relating to environmental contamina-
14 tion, including this Act (except as expressly provided
15 in section 101(39)(D) (42 U.S.C. 9601(39)(D)), sec-
16 tion 107(a)(5)(C) (42 U.S.C. 9607(a)(5)(C)), the
17 Solid Waste Disposal Act (42 U.S.C. 6901 et seq.),
18 the Federal Water Pollution Control Act (33 U.S.C.
19 1251 et seq.), the Toxic Substances Control Act (15
20 U.S.C. 2601 et seq.), or title XIV of the Public
21 Health Service Act, commonly known as the “Safe
22 Drinking Water Act” (42 U.S.C. 300(f) et seq.).”.

23 **SEC. 303. SITE CHARACTERIZATION PROGRAM.**

24 Title I of the Act is amended by adding after section
25 128 (as added by this Act) the following new section:

1 **“§ 129. Site characterization technical assistance pro-**
2 **gram**

3 “(a) IN GENERAL.—The Administrator shall estab-
4 lish a program to provide technical and other assistance
5 to municipalities to conduct site characterizations for fa-
6 cilities at which voluntary response actions are being con-
7 ducted or are proposed to be conducted pursuant to a
8 State voluntary response program that meets the require-
9 ments described in section 127.

10 “(b) TECHNICAL ASSISTANCE.—In carrying out the
11 program established under subsection (a), the Adminis-
12 trator may provide technical and other assistance to a mu-
13 nicipality to conduct a site characterization of a facility
14 within the jurisdiction of the municipality at which vol-
15 untary response actions are being conducted or are pro-
16 posed to be conducted. A municipality requesting technical
17 and other assistance shall provide to the Administrator the
18 following information—

19 “(1) describing the facility at which voluntary
20 response actions are being conducted or are pro-
21 posed to be conducted;

22 “(2) demonstrating the financial need of the
23 owner or prospective purchaser of such a facility for
24 funds to conduct a site characterization;

1 “(3) analyzing the potential of the facility for
2 creating new businesses and employment opportuni-
3 ties on completion of the response action;

4 “(4) estimating the fair market value of the site
5 after the proposed or ongoing response action, if a
6 response action is necessary;

7 “(5) regarding the economic viability and com-
8 mercial activity on real property—

9 “(i) located within the immediate vicinity
10 of the affected site at the time of consideration
11 of the application; or

12 “(ii) projected to be located within the im-
13 mediate vicinity of the affected site by the date
14 that is 5 years after the date of the consider-
15 ation of the application;

16 “(6) regarding the potential of the facility for
17 creating new businesses and employment opportuni-
18 ties on completion of a response action;

19 “(7) regarding whether the affected site is lo-
20 cated in an economically distressed community;

21 “(8) regarding the presence of multiple sources
22 of risk as described in section 117(k) of this Act;
23 and

1 “(9) in such form, as the Administrator consid-
2 ers appropriate to carry out the purposes of this sec-
3 tion.”.

4 **TITLE IV—LIABILITY AND ALLOCATION**

5 **SEC. 401. RESPONSE AUTHORITIES.**

6 (a) Section 104(e)(2) of the Act (42 U.S.C.
7 9604(e)(2)) is amended by deleting the word “cleanup”
8 and inserting the phrase “response action”, and inserting
9 after subparagraph (C) the following:

10 “(D) The nature and extent of all activities
11 and operations at such vessel or facility, includ-
12 ing the identity of any persons engaged in, re-
13 sponsible for, controlling, or having the ability
14 to control such activities or operations.

15 “(E) Information relating to the liability or
16 responsibility of any person to perform or pay
17 for a response action.

18 “(F) Information that is otherwise relevant
19 to enforce the provisions of this Act.”.

20 (b) Section 104(e)(7) of the Act (42 U.S.C. 9604(e))
21 is amended to read as follows:

22 “(7) ADMINISTRATIVE SUBPOENAS.—When it
23 would assist in the collection of information nec-
24 essary or appropriate for the purposes of implement-
25 ing this Act, the President may by subpoena require

1 the attendance and testimony of witnesses and the
2 production of reports, papers, documents, answers to
3 questions, and other information that the President
4 deems necessary. Witnesses shall be paid the same
5 fees and mileage that are paid witnesses in the
6 courts of the United States. In the event of contu-
7 macy or failure or refusal of any person to obey any
8 such subpoena, any district court of the United
9 States in which venue is proper shall have jurisdic-
10 tion to order any such person to comply with such
11 subpoena. Any failure to obey such an order of the
12 court is punishable by the court as a contempt
13 thereof.

14 “(8) CONFIDENTIALITY OF INFORMATION—

15 “(A) Any records, reports, or information
16 obtained from any person under this section
17 (including records, reports or information ob-
18 tained by representatives of the President and
19 records, reports or information obtained pursu-
20 ant to a contract, grant or other agreement to
21 perform work pursuant to this section, but not
22 including documents, reports, compilations,
23 summaries, or other analyses prepared by the
24 President or representatives of the President
25 which reference or incorporate information ob-

1 tained under this section) shall be available to
2 the public, except as follows:

3 “(i) Upon a showing satisfactory to
4 the President (or the State, as the case
5 may be) by any person that records, re-
6 ports or information, or any particular
7 part thereof (other than health or safety
8 effects data), to which the President (or
9 the State, as the case may be) or any offi-
10 cer, employee, or representative has access
11 under this section if made public would di-
12 vulge information entitled to protection
13 under section 1905 of title 18 of the
14 United States Code, such information or
15 particular portion thereof shall be consid-
16 ered confidential in accordance with the
17 purposes of that section, except that such
18 record, report, document or information
19 may be disclosed to other officers, employ-
20 ees, or authorized representatives of the
21 United States (including government con-
22 tractors) concerned with carrying out this
23 chapter, or when relevant in any proceed-
24 ing under this chapter, or, if such records,
25 reports or information are obtained or sub-

mitted to the United States (or the State, as the case may be) pursuant to a contract, grant or other agreement to perform work pursuant to this section, to persons from whom the President seeks to recover costs pursuant to this Act.

“(ii) This section does not require that information which is exempt from disclosure pursuant to section 522(a) of title 5 of the United States Code by reason of subsection (b)(5), subsection (b)(6), or subsection (b)(7) of such section, be available to the public, nor shall the disclosure of any such information pursuant to this section authorize disclosure to other parties or be deemed to waive any confidentiality privilege available to the President under any Federal or State law.”.

SEC. 402. COMPLIANCE WITH ADMINISTRATIVE ORDERS.

(a) Section 106(a) of the Act (42 U.S.C. 9606(a)) is amended by—

(1) inserting after the phrase “hazardous substance” the phrase “, or pollutant or contaminant”;
and

1 (2) by adding at the end thereof the following:

2 “The President may amend such orders and issue
3 additional orders, as appropriate, without a subse-
4 quent finding of an imminent and substantial
5 endangerment, to complete response action under-
6 taken in response to a release or substantial threat
7 of a release, or to require additional response actions
8 that are necessary or appropriate.”.

9 (b) Section 106(b)(1) of the Act (42 U.S.C.
10 9606(b)(1)) is amended—

11 (1) by striking out the phrase “to enforce such
12 order”, and

13 (2) by inserting before the period “, or be re-
14 quired to comply with such order, or both, even if
15 another party has complied, or is complying, with
16 the terms of the same order or another order per-
17 taining to the same facility, release or threatened re-
18 lease”; and

19 (3) by inserting at the end of the paragraph the
20 following:

21 “For purposes of this title, a ‘sufficient cause’ requires—

22 “(A) an objectively reasonable belief by the per-
23 son to whom the order is issued that the person is
24 not liable for any response costs under section 107
25 of this title; or

1 “(B) that the action to be performed pursuant
2 to the order is determined to be inconsistent with
3 the national contingency plan.

4 The existence or results of an allocation process pursuant
5 to section 122a of this title shall not affect or constitute
6 a basis for a determination of ‘sufficient cause.’”.

7 (c) Section 106(b)(2) is amended by moving the sec-
8 ond sentence of subsection (b)(2)(A) and redesignating it
9 as subsection (b)(4), and by striking the word “para-
10 graph” in such newly designated subsection (b)(4) and re-
11 placing it with the word “subsection”.

12 (d) Section 106(b)(2)(A) of the Act (42 U.S.C.
13 9602(b)(2)(A) is amended by striking out the phrase
14 “completion of”, and inserting the phrase “the President
15 determines that such person has completed”.

16 (e) Section 106(b)(2)(C) of the Act (42 U.S.C.
17 9606(b)(2)(C)) is amended by inserting after the words
18 “Subparagraph (D)” the phrase “, or as may be author-
19 ized in a settlement entered into under section 122a of
20 this title.

21 **SEC. 403. LIMITATIONS TO LIABILITY FOR RESPONSE**
22 **COSTS.**

23 Section 107 of the Act (42 U.S.C. 9607) is amend-
24 ed—

25 (a) in subsection (a) by inserting—

1 “(5) Notwithstanding paragraphs (1) through
2 (4) of this subsection, a person who does not impede
3 the performance of response actions or natural re-
4 source restoration shall not be liable—

5 “(A) to the extent liability is based solely
6 on subsection 107(a)(3) or 107(a)(4) of this
7 Act, and the arrangement for disposal, treat-
8 ment, or transport for disposal or treatment, or
9 the acceptance for transport for disposal or
10 treatment, involved less than five hundred
11 (500) pounds of municipal solid waste (MSW)
12 or sewage sludge as defined in sections 101(41)
13 and 101(44) of this Act, respectively, or such
14 greater or lesser amount as the Administrator
15 may determine by regulation;

16 “(B) to the extent liability is based solely
17 on subsection 107(a)(3) or 107(a)(4) of this
18 Act, and the arrangement for disposal, treat-
19 ment, or transport for disposal or treatment, or
20 the acceptance for transport or disposal or
21 treatment, involved less than ten (10) pounds
22 or liters of materials containing hazardous sub-
23 stances or pollutants or contaminants of such
24 greater or lesser amount as the Administrator
25 may determine by regulation, except where—

1 “(i) the Administrator has determined
2 that such material contributed significantly
3 or could contribute to the costs of response
4 at the facility; or

5 “(ii) the person has failed to respond
6 fully and completely to information re-
7 quests by the United States, or has failed
8 to certify that, on the basis of information
9 within its possession, it qualifies for this
10 exception;

11 “(C) to the extent liability is based solely
12 on subsection 107(a)(1) of this Act, for a re-
13 lease or threat of release from a facility, and
14 the person is a bona fide prospective purchaser
15 of the facility as defined in section 101(39);

16 “(D) to the extent the liability of a depart-
17 ment, agency, or instrumentality of the United
18 States is based solely on section 107(a)(1) or
19 (2) with regard to a facility over which the de-
20 partment, agency, or instrumentality exercised
21 no regulatory or other control over activities
22 that directly or indirectly resulted in a release
23 or threat of a release of a hazardous substance,
24 and—

1 “(i) all activities that directly or indi-
2 rectly resulted in a release of threat of a
3 release of a hazardous substance during
4 the period of ownership by the United
5 States occurred prior to 1976;

6 “(ii) the activities either directly or in-
7 directly resulting in a release or a threat of
8 a release of a hazardous substance at the
9 facility were pursuant to a statutory au-
10 thority;

11 “(iii) such department, agency, or in-
12 strumentality of the United States did not
13 cause or contribute to the release or threat
14 of release of hazardous substances or pol-
15 lutants or contaminants at the facility; and

16 “(iv) there are persons, other than the
17 United States, who are both potentially lia-
18 ble for the release of hazardous substances
19 or pollutants or contaminants at the facil-
20 ity and fully capable of performing or fi-
21 nancing the response action at the facility;
22 or

23 “(E) to the extent the liability of a Federal
24 or State entity or municipality is based solely
25 on its ownership of a road, street, or other right

1 of way or other public transportation route over
2 which hazardous substances are transported, or
3 the granting of a license or permit to conduct
4 business; or

5 “(F) For more than 10 percent of total re-
6 sponse costs at the facility, in aggregate, for all
7 persons to the extent their liability is based
8 solely on subsections 107(a)(3) or 107(a)(4) of
9 this Act, and the arrangement for disposal,
10 treatment, or transport for disposal or treat-
11 ment, or the acceptance for transport for dis-
12 posal or treatment involved only municipal solid
13 waste (MSW) or sewage sludge as defined in
14 sections 101(41) and 101(44), respectively, of
15 this Act. Such limitation on liability shall apply
16 only—

17 “(i) where either the acts or omissions
18 giving rise to liability occurred before the
19 date thirty-six (36) months after enact-
20 ment of this paragraph, or the person as-
21 serting the limitation institutes or partici-
22 pates in a qualified household hazardous
23 waste collection program within the mean-
24 ing of section 101(43); and

1 “(ii) where the disposal did not occur
2 on lands owned by the United States or
3 any department, agency, or instrumentality
4 therefore, or on any tribal land.”.

5 (b) by inserting after subsection (m) the follow-
6 ing:

7 “(n) PROSPECTIVE PURCHASER AND WINDFALL
8 LIEN.—Where there are unrecovered response costs for
9 which an owner of a facility is not liable by operation of
10 subsection 107(a)(5)(C) of this Act, and a response action
11 for which there are unrecovered costs inures to the benefit
12 of such owner, the United States shall have a lien upon
13 the facility for such unrecovered costs. Such lien—

14 “(1) shall not exceed the increase in fair market
15 value of the property attributable to the response ac-
16 tion at the time of a subsequent sale or other dis-
17 position of property;

18 “(2) shall be subject to the requirements for no-
19 tice and validity established in paragraph (3) of sub-
20 section (l) of this section; and

21 “(3) shall continue until the earlier of satisfac-
22 tion of the lien, or recovery of all response costs in-
23 curred at the facility.”

1 (c) Section 120 of the Act (42 U.S.C. 9620) is
2 amended by inserting before the word “facilities” in
3 the title of the section the phrase “entities and”.

4 (d) Section 120(a)(1) of the Act (42 U.S.C.
5 9620(a)(1)) is amended—

6 (1) after the word “title” in the first sen-
7 tence by inserting the phrase “the right to con-
8 tribution protection set forth in section 113 and
9 122, when such department, agency or instru-
10 mentality resolves its share of liability under
11 this Act and liability for all federal civil and ad-
12 ministrative penalties and fines imposed under
13 this Act, regardless of whether such penalties
14 and fines are punitive or coercive in nature or
15 are imposed for isolated or continuing viola-
16 tions.”;

17 (2) by inserting the word “other” before
18 the phrase “person or entity” in the second
19 sentence and by inserting after the second sen-
20 tence the following new sentence:

21 “The waiver of immunity in this section does not en-
22 compass uniquely governmental actions such as—

23 “(A) any actions of any department, agen-
24 cy or instrumentality, except for official seizure
25 of or holding title to a facility, taken pursuant

1 to Federal authority to regulate the economy in
2 preparation for, during, or otherwise in connec-
3 tion with war through the use and implementa-
4 tion of national priority rating systems, national
5 wage, profit and price incentives or controls, or
6 otherwise to mobilize the national economy for
7 war-related production; or

8 “(B) any actions of any department, agen-
9 cy, or instrumentality taken in response to a
10 natural disaster pursuant to the Emergency
11 Flood Control Work Act (33 U.S.C. 701(n)), or
12 the Disaster Relief Act of 1974 (42 U.S.C.
13 5121 et seq.).”;

14 (e) Section 120(a)(4) of the Act (42 U.S.C.
15 9620(a)(4)) is amended—

16 (1) by inserting “currently” before
17 “owned” in the first sentence;

18 (2) by inserting after the word “United
19 States” the phrase “in the following cir-
20 cumstances: (A)”; and

21 (3) by inserting after the word “List” “;
22 (B) when such facilities are included on the Na-
23 tional Priorities List but are specifically re-
24 ferred to the State by the Administrator pursu-
25 ant to the provisions of section 127 of this Act;

1 or (c) when such laws are part of an authorized
2 program approved by the Administrator pursu-
3 ant to section 127 of this Act, and such facili-
4 ties are included on the National Priorities List
5 and are to be addressed by the State authorized
6 program pursuant to section 127 of this Act.
7 Each department, agency, or instrumentality of
8 the United States shall be subject to State re-
9 quirements, both substantive and procedural,
10 respecting liability for the costs of responding
11 to releases or threats of releases of hazardous
12 substances at non-federally-owned facilities re-
13 ferred to the State pursuant to section 127 of
14 this Act, or such requirements that are part of
15 a State authorized program for non-federally-
16 owned facilities being addressed under a State
17 authorized program pursuant to section 127 of
18 this Act.”;

19 (4) after the word “preceding” by replac-
20 ing the word “sentence” with “sentences”;

21 (5) at the end of the section by adding
22 “This waiver of immunity for such facilities
23 shall include all civil and administrative pen-
24 alties and fines imposed under such laws, re-
25 gardless of whether such penalties and fines are

1 punitive or coercive in nature or are imposed
2 for isolated or continuing violations. Neither the
3 United States, nor any agent, employee or offi-
4 cer thereof, shall be immune or exempt from
5 any process or sanction of any State or Federal
6 Court with respect to the enforcement of any
7 appropriate relief under such laws, but the
8 United States shall be entitled to remove any
9 action filed in state court against any depart-
10 ment, agency, instrumentality, employee or offi-
11 cer of the United States to the appropriate
12 Federal district court. No agent, employee, or
13 officer of the United States shall be personally
14 liable for any civil or administrative penalty
15 under any Federal or State law with respect to
16 any act or omission within the scope of the offi-
17 cial duties of the agent, employee, or officer. All
18 funds collected by a State from the Federal
19 Government from penalties and fines imposed
20 for violation of any substantive or procedural
21 requirement referred to in this subsection shall
22 be used by the State only for projects designed
23 to improve or protect the environment or to de-
24 fray the costs of environmental protection or
25 enforcement.”.

1 (f) Section 120(j)(1) of the Act (42 U.S.C.
2 9620(j)(1)) is amended before the phrase “with re-
3 spect to the site” in the second sentence by inserting
4 “or any State law applicable under section
5 120(a)(4)”.

6 **SEC. 404. LIABILITY.**

7 (a) Section 107(a)(1) of the Act (42 U.S.C.
8 9607(a)(1)) is amended by striking the word “and” and
9 inserting the word “or”.

10 (b) Section 107(a)(3) of the Act (42 U.S.C.
11 9607(a)(3)) is amended by striking out the phrase “by
12 any other party or entity,”.

13 (c) Section 107(a)(4) of the Act (42 U.S.C.
14 9607(a)(4)) is amended—

15 (1) by inserting a blank line before the phrase
16 “from which there is a release”;

17 (2) by moving the phrase “from which there is
18 a release” to the left margin; and

19 (3) inserting a comma after the phrase “threat-
20 ened release”.

21 (d) Section 107(a)(4)(A) of the Act (42 U.S.C.
22 9607(a)(4)(A)) is amended by inserting the phrase “, in-
23 cluding direct costs, indirect costs, and costs of overseeing
24 response actions conducted by private parties” before the
25 phrase “incurred by the United States”.

1 (e) Section 107(a)(4)(B) of the Act (42 U.S.C.
2 9607(a)(4)(B)) is amended—

3 (1) by striking out the word “other” both times
4 it appears; and

5 (2) by inserting the phrase “other than the
6 United States, a State or an Indian tribe” before the
7 phrase “consistent with the national contingency
8 plan”.

9 (f) Section 107(c)(3) of the Act (42 U.S.C.
10 9607(a)(3)) is amended—

11 (1) by inserting the phrase “in addition to li-
12 ability for any response costs incurred by the United
13 States as a result of such failure to take proper ac-
14 tion,” after the word “person” the second time it
15 appears;

16 (2) by striking out the phrase “at least equal
17 to, and not more than” and inserting the phrase “up
18 to”;

19 (3) by striking out the comma after the word
20 “times”; and

21 (4) by striking out the phrase “any costs in-
22 curred by the Fund as a result of such failure to
23 take proper action” and inserting the phrase “such
24 response costs”.

1 (g) Section 107 of the Act (42 U.S.C. 9607(a)(4)(B))
2 is amended by inserting the phrase “, or pollutant or con-
3 taminant” after the term “hazardous substance” or “haz-
4 ardous substances” wherever they appear in sections
5 107(a)(2), (3) and (4); 107(b); 107(c); 107(d)(1) and (2);
6 107(f)(1); 107(i); 107(j); and 107(k)(1)(B).

7 **SEC. 405. CIVIL PROCEEDINGS.**

8 (a) Section 113(a) of the Act (42 U.S.C. 9613(a))
9 is amended—

10 (1) by striking out the phrase “upon application
11 by any interested person”, and inserting the phrase
12 “by any adversely affected person through the filing
13 of a petition for review”; and

14 (2) by striking out the phrase “application shall
15 be made”, and inserting in lieu thereof “petition
16 shall be filed”.

17 (b) Section 113(b) of the Act (42 U.S.C. 9613(b))
18 is amended—

19 (1) before “without regard to the citizenship,”
20 by inserting the phrase “or in any manner limiting
21 or affecting the President’s ability to carry out a re-
22 sponse action under this Title,”; and

23 (2) by inserting immediately after the first sen-
24 tence the following sentence: “Any action initiated in
25 any state or local court against the United States

1 (or any department, agency, or instrumentality, offi-
2 cer or employee thereof) pursuant to or under any
3 provision of or authorized by this title may be re-
4 moved by the United States to the appropriate fed-
5 eral district court in accordance with section 1446 of
6 title 18 of the United States Code.”

7 (c) Section 113(g) of the Act (42 U.S.C. 9613(g))
8 is amended by striking paragraphs (2) and (3) and insert-
9 ing—

10 “(2) ACTIONS FOR RECOVERY OF COSTS.—Ex-
11 cept as provided in paragraph (3) below, an initial
12 action for recovery of costs referred to in section
13 107 of this title must be commenced—

14 “(A) for removal action, within three years
15 after completion of all removal action taken
16 with respect to the facility, including off-site
17 disposal of any removed materials; except that
18 if physical on-site construction of the remedial
19 action is initiated within three years after the
20 completion of all removal action taken with re-
21 spect to the facility, costs incurred for removal
22 action may be recovered in the cost recovery ac-
23 tion brought under subparagraph (B); and

1 “(B) for a remedial action, within six years
2 after initiation of physical on-site construction
3 of the remedial action.

4 In any such action described in this subsection, the
5 court shall enter a declaratory judgment on liability
6 for response costs or damages that will be binding
7 on any subsequent action or actions to recover fur-
8 ther response costs or damages. A subsequent action
9 or actions under section 107 of this title for further
10 response costs at the vessel or facility may be main-
11 tained at any time during the response action, but
12 must be commenced no later than three years after
13 the date of completion of all response action. Except
14 as otherwise provided in this paragraph, an action
15 may be commenced under section 107 of this title
16 for recovery of costs at any time after such costs
17 have been incurred.

18 “(3) CONTRIBUTION.—An action by a poten-
19 tially responsible party against another potentially
20 responsible party for recovery of any response costs
21 or damages must be commenced within the later
22 of—

23 “(A) the time limitations set forth in para-
24 graph (2) above, or

1 “(B) where recovery is sought for costs or
2 damages paid pursuant to a judgment or settle-
3 ment, three years after—

4 “(i) the date of judgment in any ac-
5 tion under this Act for recovery of such
6 costs or damages, or

7 “(ii) the date of any administrative
8 order or judicial settlement for recovery of
9 the costs or damages paid or incurred pur-
10 suant to such a settlement.”.

11 (d) Section 113(g) of the Act (42 U.S.C. 9613(g))
12 is amended by inserting the following at the end thereof:

13 “(4) CLAIMS BY THE UNITED STATES, STATES
14 OR INDIAN TRIBES.—Claims by the United States
15 under section 106, and claims by the United States,
16 a State or Indian tribe under section 107(a), of this
17 Act shall not be deemed compulsory counterclaims in
18 an action against the United States, a State or an
19 Indian tribe seeking response costs, contribution,
20 damages, or any other claim by any person under
21 this Act.”.

22 (e) Section 113(j)(1) of the Act (42 U.S.C.
23 9613(j)(1)) is amended—

1 (1) before the phrase “or ordered” by inserting
2 the phrase “or selected by the President pursuant to
3 this Act,”; and

4 (2) after the phrase “or ordered” by inserting
5 the phrase “or sought”.

6 **SEC. 406. LIMITATIONS ON CONTRIBUTION ACTIONS.**

7 Section 113 of the Act (42 U.S.C. 9613) is amend-
8 ed—

9 (a) by amending subsection (f)(1) as follows—

10 (1) by redesignating the paragraph as sub-
11 paragraph “(1)(A),”;

12 (2) before the phrase “may seek contribu-
13 tion” by inserting the phrase “who is liable or
14 potentially liable under section 107(a) of this
15 title”;

16 (3) by striking out the phrase “during or
17 following any civil action under section 106 of
18 this title or under section 107(a) of this title”,
19 and inserting in lieu thereof the phrase “in a
20 claim asserted under section 107(a)”;

21 (4) by deleting the period at the end of the
22 first sentence, and inserting the following:

23 “except that there shall be no right of contribution
24 where—

1 “(i) the person asserting the right of con-
2 tribution has waived such rights in a settlement
3 pursuant to this Act;

4 “(ii) the person from whom contribution is
5 sought is liable solely under section 107(a)(3)
6 of this Act, and contributed less than ten
7 pounds or ten liters of material containing haz-
8 ardous substances at the facility, or such great-
9 er or lesser amount as the Administrator may
10 determine by regulation;

11 “(iii) the person from whom contribution is
12 sought has entered into a final settlement with
13 the United States pursuant to section 122(g).”;

14 (5) before the phrase “this section and the
15 Federal Rules” by inserting the phrase “section
16 107(a),”; and

17 (6) by striking out the sentence “Nothing
18 in this subsection shall diminish the right of
19 any person to bring an action for contribution
20 in the absence of a civil action under section
21 106 of this title or section 107 of this title.”.

22 (b) by inserting after subparagraph (1)(A) the
23 following subparagraph:

24 “(B) Any person who commences an action for
25 contribution against a person who is not liable by

1 operation of subsection 107(a)(5) of this Act, or
2 against a person who is protected from suits in con-
3 tribution by this section or by a settlement with the
4 United States, shall be liable to the person against
5 whom the claim of contribution is brought for all
6 reasonable costs of defending against the claim, in-
7 cluding all reasonable attorney's and expert witness
8 fees.”.

9 (c) Section 113(f) of the Act (42 U.S.C.
10 9613(f)) is amended by striking out paragraph (2),
11 and inserting the following:

12 “(2) SETTLEMENT.—A person that has re-
13 solved its liability to the United States in an admin-
14 istrative or judicially approved settlement shall not
15 be liable for claims by other persons regarding re-
16 sponse actions, response costs or damages addressed
17 in the settlement. A person that has resolved its li-
18 ability to a State in an administrative or judicially
19 approved settlement shall not be liable for claims by
20 persons other than the United States regarding re-
21 sponse costs for damages addressed in the settle-
22 ment for which the State has a claim under this
23 title. Such settlement does not discharge any other
24 potentially responsible persons unless its terms so
25 provide, but it reduces the potential liability of such

1 other persons by the amount of the settlement. The
2 protection afforded by this section shall include pro-
3 tection against contribution claims and all other
4 types of claims, under federal or state law, that may
5 be asserted against the settling party for recovery of
6 response costs or damages incurred or paid by an-
7 other person, if such costs or damages are addressed
8 in the settlement, but shall not include protection
9 against claims based on contractual indemnification
10 or other express contractual agreements to pay such
11 costs or damages.”.

12 **SEC. 407. SCOPE OF RULEMAKING AUTHORITY.**

13 Section 115 of the Act (42 U.S.C. 9615), is amended
14 by redesignating the text of the section as subsection “(a)”
15 and adding a new subsection:

16 “(b) The authority conferred by this section includes,
17 without limitation, authority to promulgate legislative reg-
18 ulations to define the terms and scope of sections 101
19 through 405 this Act, inclusive.

20 “(c) This section confirms, without limitation, au-
21 thority to promulgate regulations to define the terms of
22 this Act as they apply to lenders and other financial serv-
23 ices providers, and property custodians, trustees, and
24 other fiduciaries.”.

1 **SEC. 408. ENHANCEMENT OF SETTLEMENT AUTHORITIES.**

2 Section 122 of the Act (42 U.S.C. 9622), is amend-
3 ed—

4 (a) by striking out subparagraph (e)(3);

5 (b) by redesignating subparagraphs (e)(4) and
6 (5) as subparagraphs (e)(3) and (4), respectively;

7 (c) By redesignating subparagraphs (e)(6) as a
8 new section 122(o) and by amending redesignated
9 section 122(n)—

10 (1) by deleting “remedial investigation and
11 feasibility study” and inserting in lieu thereof
12 “response action”; and

13 (2) by deleting “remedial action” in both
14 places where it appears and inserting “response
15 action”;

16 (d) by inserting at the end of Section 122 the
17 following—

18 “(p) RETENTION OF FUNDS.—If, as part of any
19 agreement under this chapter, the President will be carry-
20 ing out any action and the parties will be paying amounts
21 to the President, the President may retain such amounts
22 in interest bearing accounts, and use such amounts, to-
23 gether with accrued interest, for purposes of carrying out
24 the agreement.

25 “(q) Notwithstanding the limitations on review in sec-
26 tion 113(h), and except as provided in subsection (g) of

1 this section, a person whose claim for response costs or
2 contribution is limited as a result of contribution protec-
3 tion afforded by an administrative settlement under this
4 section may challenge the cost recovery component of such
5 settlement only by filing a complaint against the Adminis-
6 trator in the United States District Court within 60 days
7 after such settlement becomes final. Venue shall lie in the
8 district in which the appropriate Regional Administrator
9 has her principal office. Any review of an administrative
10 settlement shall be limited to the administrative record,
11 and the settlement shall be upheld unless the objecting
12 party can demonstrate on that record that the decision
13 of the President to enter into the administrative settle-
14 ment was arbitrary, capricious, or otherwise not in accord-
15 ance with law.”;

16 (e) by deleting subsection (f)(1) and inserting
17 in lieu thereof:

18 “(1) FINAL COVENANTS.—The President shall
19 offer potentially responsible parties who enter into
20 settlement agreements otherwise acceptable to the
21 United States a final covenant not to sue concerning
22 any liability to the United States under this Act, in-
23 cluding a covenant with respect to future liability,
24 for response actions or response costs, provided
25 that—

1 “(A) the settling party agrees to perform,
2 or there are other adequate assurances of the
3 performance of, a final remedial action for the
4 release or threat of release that is the subject
5 of the settlement;

6 “(B) the settlement agreement has been
7 reached prior to the commencement of litigation
8 against the settling party under section 106 or
9 107 of this Act with respect to this facility;

10 “(C) the settling party waives all contribu-
11 tion rights against other potentially responsible
12 parties at the facility; and

13 “(D) the settling party pays premium that
14 compensates for the risks of remedy failure; fu-
15 ture liability resulting from unknown condi-
16 tions; unanticipated increases in the cost of any
17 uncompleted response action, unless the settling
18 party is performing the response action; and
19 the United States litigation risk with respect to
20 persons who have not resolved their liability to
21 the United States under this Act, unless all
22 parties have settled their liability to the United
23 States, or the settlement covers 100 percent of
24 the United States response costs. The President
25 shall have sole discretion to determine the ap-

1 appropriate amount of any such premium, and
2 such determinations are committed to the
3 President's discretion. The President has dis-
4 cretion to waive or reduce the premium pay-
5 ment for persons who demonstrate an inability
6 to pay such a premium.

7 “(2) DISCRETIONARY COVENANTS.—For all
8 other settlements under this title, the President
9 may, in his discretion, provide any person with a
10 covenant not to sue concerning any liability to the
11 United States under this title, if the covenant not to
12 sue is in the public interest. The President may in-
13 clude any conditions in such covenant not to sue, in-
14 cluding but not limited to the additional condition
15 referred to in paragraph (5) of this subsection. In
16 determining whether such conditions or covenants
17 are in the public interest, the President shall con-
18 sider the effectiveness and reliability of the response
19 action, the nature of the risks remaining at the facil-
20 ity, the strength of evidence, the likelihood of cost
21 recovery, the reliability of any response action or ac-
22 tions to restore, replace or acquire the equivalent of
23 injured natural resources, and any other factors rel-
24 evant to the protection of human health, welfare,
25 and the environment.”.

1 (f) by striking out the word “remedial”, wher-
2 ever it appears in paragraph (f)(2), and inserting
3 the word “response”;

4 (g) by deleting paragraphs (f)(3) and (f)(4);

5 (h) by redesignating existing paragraphs (f)(2),
6 (f)(5), and (f)(6) as paragraphs (f)(3), (f)(4), and
7 (f)(5), respectively;

8 (i) in redesignated subparagraph (f)(5)(A)—

9 (1) by striking out the word “remedial”,
10 and inserting in lieu thereof the word “re-
11 sponse”;

12 (2) by deleting “paragraph (2)” in the
13 first clause of the first sentence and inserting
14 “paragraph (1) or (3)” in lieu thereof;

15 (3) by deleting “de minimis settlements”
16 and inserting “de minimis and other expedited
17 settlements pursuant to subsection (g) of this
18 section” in lieu thereof; and

19 (4) by striking the phrase “the President
20 certifies under paragraph (3) that remedial ac-
21 tion has been completed at the facility con-
22 cerned”, and inserting in lieu thereof the phrase
23 “that the response action that is the subject of
24 the settlement agreement is selected”;

1 (j) by amending redesignated subsection
2 (f)(5)(B)—

3 (1) by striking “In extraordinary cir-
4 cumstances, the” and inserting the word
5 “The”;

6 (2) by striking the phrase “those referred
7 to in paragraph (4) and”;

8 (3) by inserting “the agreement containing
9 the covenant not to sue provides for payment of
10 a premium to address possible remedy failure or
11 any releases that may result from unknown
12 conditions, and” before the phrase “the other
13 terms”; and

14 (4) by inserting at the end the following:
15 “The President may, in his discretion, waive or
16 reduce the premium payment for persons who
17 demonstrate an inability to pay such a pre-
18 mium.”

19 (k) by deleting paragraph (g)(1)(A) and insert-
20 ing in lieu thereof:

21 “(g) EXPEDITED FINAL SETTLEMENT.—

22 “(1) PARTIES ELIGIBLE FOR EXPEDITED SET-
23 TLEMENT.—Wherever practicable and in the public
24 interest, and as provided in section 122a of this
25 title, the President will as promptly as possible offer

1 to reach a final administrative or judicial settlement
2 with potentially responsible parties who, in the judg-
3 ment of the President, meet one or more of the fol-
4 lowing conditions for eligibility for an expedited set-
5 tlement—

6 “(A) the potentially responsible party’s in-
7 dividual contribution of hazardous substances
8 at the facility is de minimis. The contribution
9 of hazardous substance to a facility by a poten-
10 tially responsible party is de minimis if—

11 “(i) the potentially responsible party’s
12 volumetric contribution of materials con-
13 taining hazardous substances is minimal in
14 comparison to the total volumetric con-
15 tributions at the facility; such individual
16 contribution is presumed to be minimal if
17 it is one percent or less of the total volu-
18 metric contribution at the facility, unless
19 the Administrator identifies a different
20 threshold based on site-specific factors;
21 and

22 “(ii) the potentially responsible par-
23 ty’s hazardous substances do not present
24 toxic or other hazardous effects that are

1 significantly greater than those of other
2 hazardous substances at the facility; or”;

3 (l) by inserting the following after subsection
4 (g)(1)(B)—

5 “(C) The potentially responsible party’s li-
6 ability is based solely on subsection 107(a)(3)
7 or 107(a)(4) of this title, and the arrangement
8 for disposal, treatment, or transport for dis-
9 posal or treatment, or the acceptance for trans-
10 port for disposal or treatment, involved only
11 municipal solid waste (MSW) or sewage sludge
12 as defined in section 101(41) or 101(44), re-
13 spectively, of this Act. The Administrator may
14 offer to settle the liability of generators and
15 transporters of MSW or sewage sludge whose li-
16 ability is limited pursuant to section
17 107(a)(5)(A) of this title for up to 10 percent
18 of the total response costs at the facility; or

19 “(D) The potentially responsible party is a
20 small business or a municipality and has dem-
21 onstrated to the United States a limited ability
22 to pay response costs. For purposes of this pro-
23 vision:

24 “(i) In the case of a small business,
25 the President shall consider, to the extent

1 that information is provided by the small
2 business, the business' ability to pay for its
3 total allocated share, and demonstrable
4 constraints on its ability to raise revenues.

5 “(ii) In the case of a municipal owner
6 or operator, the President shall consider,
7 to the extent that information is provided
8 by the municipality, the following factors:

9 (1) the municipality's general obligation
10 bond rating and information about the
11 most recent bond issue for which the rat-
12 ing was prepared; (2) the amount of total
13 available funds (other than dedicated
14 funds); (3) the amount of total operating
15 revenues (other than obligated or encum-
16 bered revenues), (4) the amount of total
17 expenses; (5) the amounts of total debt
18 and debt service; (6) per capita income;
19 and (7) real property values. A municipal-
20 ity may also submit for consideration by
21 the President an evaluation of the poten-
22 tial impact of the settlement on essential
23 services that the municipality must pro-
24 vide, and the feasibility of making delayed
25 payments or payments over time. If a mu-

1 municipality asserts that it has additional en-
2 vironmental obligations besides its poten-
3 tial liability under this Act, then the mu-
4 nicipality may create a list of the obliga-
5 tions, including an estimate of the costs of
6 complying with such obligations. A munici-
7 pality may establish an inability to pay
8 through an affirmative showing that such
9 payment of its liability under this Act
10 would either (I) create a substantial de-
11 monstrable risk that the municipality
12 would default on existing debt obligations,
13 be forced into bankruptcy, be forced to dis-
14 solve, or be forced to make budgetary cut-
15 backs that would substantially reduce cur-
16 rent levels of protection of public health
17 and safety, or (II) necessitate a violation of
18 legal requirements or limitations of general
19 applicability concerning the assumption
20 and maintenance of fiscal municipal obliga-
21 tions.”;

22 (m) by deleting paragraphs (2) and (3) of sub-
23 section (g) and inserting in lieu thereof:

24 “(2) The determination of whether a party is
25 eligible for an expedited settlement shall be made on

1 the basis of information available to the President at
2 the time the settlement is negotiated. Such deter-
3 mination, and the settlement, are committed to the
4 President's unreviewable discretion. If the President
5 determines not to apply these provisions for expe-
6 dited settlements at a facility, the basis for that de-
7 termination must be explained in writing.

8 “(3) ADDITIONAL FACTORS RELEVANT TO MU-
9 NICIPALITIES.—In any settlement with a municipal-
10 ity pursuant to this title, the President may take ad-
11 ditional equitable factors into account in determining
12 an appropriate settlement amount, including, with-
13 out limitation, the limited resources available to that
14 party, and any in-kind services that the party may
15 provide to support the response action at the facility.
16 In considering the value of in-kind services, the
17 President shall consider the fair market value of
18 those services.”;

19 (n) by striking in paragraph (g)(4) “\$500,000”
20 and inserting “\$2,000,000”;

21 (o) by striking paragraph (g)(5) and redesign-
22 ating paragraph (g)(6) and (g)(5);

23 (p) by amending paragraph (h) by striking—

1 (1) the title, and inserting the phrase “Au-
2 thority to settle claims for penalties, punitive
3 damages and cost recovery”; and

4 (2) by striking out the phrase “settlement
5 authority”;

6 (q) by amending paragraph (h)(1)—

7 (1) before the phrase “cost incurred” by
8 inserting the phrase “past and future”;

9 (2) before the phrase “by the United
10 States Government” by inserting the phrase “or
11 that may be incurred”; and

12 (3) by inserting after the phrase “if the
13 claim has not been referred to the Department
14 of Justice for further action”, the following:
15 “The head of any department or agency with
16 the authority to seek, or to request the Attor-
17 ney General to seek, civil or punitive damages
18 under this Act may settle claims for such pen-
19 alties or damages which may otherwise be as-
20 sessed in civil administrative or judicial pro-
21 ceedings”; and by striking out “\$500,000” and
22 inserting in lieu thereof “\$2,000,000”; and
23 (r) by striking paragraph (h)(4).

1 **SEC. 409. ALLOCATION PROCEDURES**

2 The Act is amended by inserting following sec-
3 tion 122:

4 **“§ 122a. Allocation at Multi-party facilities**

5 “(a) SCOPE.—

6 “(1) Except as provided in paragraph (3) of
7 this section, for each non-federally owned facility
8 listed on the National Priorities List involving two
9 or more potentially responsible parties, the Adminis-
10 trator shall—

11 “(A) initiate the allocation process estab-
12 lished under this section for any remedial action
13 selected by the President after the date of en-
14 actment of the Superfund Reform Act of 1994,
15 and

16 “(B) initiate the allocation process estab-
17 lished in subsections (c)(2) through (d)(3) of
18 this section for any remedial action selected by
19 the President prior to the date of enactment of
20 the Superfund Reform Act of 1994, when re-
21 quested by any potentially responsible party
22 who has resolved its liability to the United
23 States with respect to the remedial action or is
24 performing the remedial action pursuant to an
25 order issued under section 106(a) of this title,
26 to assist in allocating shares among potentially

1 responsible parties. The allocation performed
2 pursuant to this subsection shall not be con-
3 strued to require—

4 “(i) payment of an orphan share pur-
5 suant to subsection (e) of this section; or

6 “(ii) the conferral of reimbursement
7 rights pursuant to subsection (h) of this
8 section.

9 “(2) Except as provided in paragraph (3) of
10 this section, the Administrator may initiate the allo-
11 cation process established under this section with re-
12 spect to any other facility involving two (2) or more
13 potentially responsible parties, as the Administrator
14 deems appropriate.

15 “(3) The allocation process established under
16 this section shall not apply to any facility where—

17 “(i) there has been a final settlement, de-
18 cree or order that determines all liability or al-
19 located shares of all potentially responsible par-
20 ties with respect to the facility; or

21 “(ii) where response action is being carried
22 out by a State pursuant to referral or author-
23 ization under section 104(k) of this title.

24 “(4) Nothing in this section limits or affects—

1 “(A) the Administrator’s obligation to per-
2 form an allocation for facilities that have been
3 the subject of partial or expedited settlements;

4 “(B) the ability of a potentially responsible
5 party at a facility to resolve its liability to the
6 United States or other parties at any time be-
7 fore initiation or completion of the allocation
8 process; or

9 “(C) the validity, enforceability, finality or
10 merits of any judicial or administrative order,
11 judgment or decree issued, signed, lodged, or
12 entered with respect to liability under this Act,
13 or authorizes modification of any such order,
14 judgment or decree.

15 “(b) MORATORIUM ON COMMENCEMENT OR CON-
16 TINUATION OF SUITS.—

17 “(1) No person may commence an action pursu-
18 ant to section 107 of this Act regarding a response
19 action for which an allocation must be performed
20 under subsection (a)(1)(A) of this section, or for
21 which the Administrator has initiated an allocation
22 under subsection (a)(1)(B) or (a)(2) of this section,
23 until 60 days after issuance of the allocator’s report
24 under subsection (d)(1) of this section.

1 “(2) If an action under section 107 of this Act
2 regarding a response for which an allocation is to be
3 performed under this section pending (A) upon date
4 of enactment of the Superfund Reform Act of 1994,
5 or (B) upon initiation of an allocation under sub-
6 section (a)(1)(B) or (a)(2) of this section, the action
7 shall be stayed until 60 days after the issuance of
8 an allocator’s report, unless the court determines
9 that a stay will not result in a just and expeditious
10 resolution of the action.

11 “(3) Any applicable limitations period with re-
12 spect to actions subject to paragraph (1) shall be
13 tolled from the earlier of—

14 “(A) the date of listing of the facility on
15 the National Priorities list; or

16 “(B) the commencement of the allocation
17 process pursuant to this section, until 120 days
18 after the allocation report required by this sec-
19 tion has been provided to the parties to the al-
20 location.

21 “(4) Nothing in this section shall in any way
22 limit or affect the President’s authority to exercise
23 the powers conferred by sections 103, 104, 105,
24 106, or 122 of this title, or to commence an action
25 where there is a contemporaneous filing of a judicial

1 consent decree resolving a party's liability; or to file
2 a proof of claim or take other action in a proceeding
3 under title 11 of the U.S. Code.

4 “(5) The procedures established in this section
5 are intended to guide the exercise of settlement au-
6 thority by the United States, and shall not be con-
7 strued to diminish or affect the principles of retro-
8 active, strict, joint and several liability under this
9 title.

10 “(c) COMMENCEMENT OF ALLOCATION.—

11 “(1) RESPONSIBLE PARTY SEARCH.—At all fa-
12 cilities subject to this section, the Administrator
13 shall, as soon as practicable but not later than 60
14 days after the earlier of the commencement of the
15 remedial investigation or the listing of the facility on
16 the National Priorities List, initiate a search for po-
17 tentially responsible parties, using its authorities
18 under section 104 of this title.

19 “(2) NOTICE TO PARTIES.—As soon as prac-
20 ticable after receipt of sufficient information, but
21 not more than eighteen (18) months after com-
22 mencement of the remedial investigation, the Admin-
23 istrator shall—

24 “(A) notify those potentially responsible
25 parties who will be assigned shares in the allo-

1 cation process and notify the public, in accord-
2 ance with section 117(d) of this title, of the list
3 of potentially responsible parties preliminarily
4 identified by the Administrator to be assigned
5 shares in the allocation process; and

6 “(B) provide the notified potentially re-
7 sponsible parties with a list of neutral parties
8 who are not employees of the United States and
9 who the Administrator determines, in his or her
10 sole discretion, are qualified to perform an allo-
11 cation at the facility.

12 “(3) SELECTION OF ALLOCATOR.—The Admin-
13 istrator shall thereafter—

14 “(A) acknowledge the parties’ selection of
15 an allocator from the list, or select an allocator
16 from the list provided to the parties if the par-
17 ties cannot agree on a selection within 30 days
18 of the notice;

19 “(B) contract with the selected allocator
20 for the provision of allocations services; and

21 “(C) make available all responses to infor-
22 mation requests, as well as other relevant infor-
23 mation concerning the facility and potentially
24 responsible parties, to the parties and to the al-
25 locator within 30 days of the appointment of

1 the allocator. The Administrator shall not make
2 available any privileged or confidential informa-
3 tion, except as otherwise authorized by law.

4 “(4) PROPOSED ADDITION OF PARTIES.—

5 “(A) For 60 days after information has
6 been made available pursuant to paragraph
7 3(C), the parties identified by the Adminis-
8 trator and members of the affected community
9 shall have the opportunity to identify and pro-
10 pose additional potentially responsible parties or
11 otherwise provide information relevant to the
12 facility or such potentially responsible parties.
13 This period may be extended by the Adminis-
14 trator for an additional 30 days upon request of
15 a party.

16 “(B) Within 30 days after the end of the
17 period specified in paragraph (A) for identifica-
18 tion of additional parties, the Administrator
19 shall issue a final list of parties subject to the
20 allocation process, hereinafter the ‘allocation
21 parties’. The Administrator shall include in the
22 list of allocation parties those parties identified
23 pursuant to paragraph (A) in the allocation
24 process unless the Administrator determines
25 and explains in writing that there is not a suffi-

1 cient basis in law or fact to take enforcement
2 action with respect to those parties under this
3 title, or that they have entered into an expedited
4 settlement under section 122(g). The Administrator's
5 determination is to be based on
6 the information available at the time of the determination
7 and is committed to the Administrator's unreviewable discretion.

9 “(5) ROLE OF FEDERAL AGENCIES.—Federal
10 departments, agencies or instrumentalities that are
11 identified as potentially responsible parties shall be
12 subject to, and be entitled to the benefits of, the allocation
13 process provided by this section to the same
14 extent as any other party.

15 “(6) REPRESENTATION OF THE UNITED
16 STATES.—The Administrator and the Attorney General
17 shall be entitled to review all documents and
18 participate in any phase of the allocation proceeding.

19 “(d) ALLOCATION DETERMINATION.—

20 “(1) SETTLEMENT AND ALLOCATION REPORT.—Following issuance of the list of allocation
21 parties, the allocator may convene the allocation parties
22 for the purpose of facilitating agreement concerning their shares. If the allocation parties do not
23 agree to a negotiated allocation of shares, the allo-

1 cator shall prepare a written report, with a
2 nonbinding, equitable allocation of percentage shares
3 for the facility, and provide such report to the allo-
4 cation parties and the Administrator.

5 “(2) INFORMATION REQUESTS.—To assist in
6 the allocation of shares, the allocator may request
7 information from the allocation parties, and may
8 make additional requests for information at the re-
9 quest of any allocation party. The allocator may re-
10 quest the Administrator to exercise any information-
11 gathering authority under this title where necessary
12 to assist in determining the allocation of shares.

13 “(3) FACTORS IN THE ALLOCATION.—Unless
14 the allocation parties agree to a negotiated alloca-
15 tion, the allocator shall prepare a nonbinding, equi-
16 table allocation of percentage shares for the facility
17 based on the following factors:

18 “(A) The amount of hazardous substances
19 contributed by each allocation party.

20 “(B) The degree of toxicity of hazardous
21 substances contributed by each allocation party.

22 “(C) The mobility of hazardous substances
23 contributed by each allocation party.

24 “(D) The degree of involvement of each al-
25 location party in the generation, transportation,

1 treatment, storage, or disposal of the hazardous
2 substance.

3 “(E) The degree of care exercised by each
4 allocation party with respect to the hazardous
5 substance, taking into account the characteris-
6 tics of the hazardous substance.

7 “(F) The cooperation of each allocation
8 party in contributing to the response action and
9 in providing complete and timely information
10 during the allocation process.

11 “(G) Such other factors that the Adminis-
12 trator determines are appropriate by published
13 regulation or guidance, including guidance with
14 respect to the identification of orphan shares
15 pursuant to paragraph (3) of this subsection.

16 “(4) IDENTIFICATION OF ORPHAN SHARES.—
17 The allocator may determine that a percentage share
18 for the facility is specifically attributable to an or-
19 phan share. The orphan share may only consist of
20 the following:

21 “(A) Shares attributable to hazardous sub-
22 stances that the allocator determines, on the
23 basis of information presented, to be specifically
24 attributable to identified but insolvent or de-

1 funct responsible parties who are not affiliated
2 with any allocation party.

3 “(B) The difference between the aggregate
4 shares that the allocator determines, on the
5 basis of the information presented, are specifi-
6 cally attributable to contributors of municipal
7 solid waste subject to the limitations in section
8 107(a)(5)(D) of this title, and the share actu-
9 ally assumed by those parties in any settle-
10 ments with the United States pursuant to sub-
11 section 122(g) of this title, including the fair
12 market value of in-kind services provided by a
13 municipality.

14 “(C) The difference between the aggregate
15 share that the allocator determines, on the
16 basis of information presented, is specifically
17 attributable to parties with a limited ability to
18 pay response costs and the share actually as-
19 sumed by those parties in any settlements with
20 the United States pursuant to subsection
21 122(g) of this title.

22 The orphan share shall not include shares attrib-
23 utable to hazardous substances that the allocator
24 cannot attribute to any identified party. Such shares
25 shall be distributed among the allocation parties.

1 “(e) FUNDING OF ORPHAN SHARES.—From funds
2 available in the Fund in any given fiscal year, and without
3 further appropriation action, the President shall make re-
4 imbursements from the Fund, to eligible parties for costs
5 incurred and equitably attributable to orphan shares de-
6 termined pursuant to this section, provided that Fund fi-
7 nancing of orphan shares shall not exceed \$300,000,000
8 in any fiscal year. Reimbursements made under this sub-
9 section shall be subject to such terms and conditions as
10 the President may prescribe.

11 “(f) TIMING.—The allocator shall provide the report
12 required by subsection (d)(1) of this section to the alloca-
13 tion parties and the Administrator within 180 days of the
14 issuance of the list of parties pursuant to subsection
15 (c)(4)(B) of this section. Upon request, for good cause
16 shown, the Administrator may grant the allocator addi-
17 tional time to complete the allocation, not to exceed 90
18 days.

19 “(g) SETTLEMENT FOLLOWING ALLOCATION.—

20 “(1) OBLIGATIONS OF THE UNITED STATES.—

21 The President will accept a timely offer of settle-
22 ment from a party based on the share determined by
23 the allocator, if it includes appropriate premia and
24 other terms and conditions of settlement, unless the
25 Administrator, with the concurrence of the Attorney

1 General of the United States, determines that a set-
2 tlement based on the allocator's determinations
3 would not be fair, reasonable, and in the public in-
4 terest. The Administrator and the Attorney General
5 shall seek to make any such determination within 60
6 days from the date of issuance of the allocator's re-
7 port. The determinations of the Administrator and
8 the Attorney General shall not be judicially
9 reviewable.

10 “(2) If the Administrator and the Attorney
11 General determine not to settle on the basis of the
12 allocation, they shall provide the allocation parties
13 and members of the affected community with a writ-
14 ten explanation of the Administrator's determina-
15 tion. If the Administrator and the Attorney General
16 make such a determination, the parties who are will-
17 ing to settle on the basis of the allocation are enti-
18 tled to a consultation with an official appointed by
19 the President, to present any objections to the deter-
20 mination, within 60 days after the determination.

21 “(3) Settlements based on allocated shares shall
22 include—

23 “(A) a waiver of contribution rights
24 against all parties who are potentially respon-
25 sible parties for the response action;

1 “(B) covenants not to sue, consistent with
2 the provisions of section 122(f) of this title, and
3 provisions regarding performance or adequate
4 assurance of performance of response actions
5 addressed in the settlement;

6 “(C) a premium that compensates for the
7 United States litigation risk with respect to po-
8 tentially responsible parties who have not re-
9 solved their liability to the United States, ex-
10 cept that no such premium shall apply if all
11 parties settle or the settlement covers 100 per-
12 cent of response costs;

13 “(D) contribution protection, consistent
14 with sections 113(f) and 122(g) of this title, re-
15 garding matters addressed in the settlement.
16 Such settlement does not discharge any of the
17 other potentially responsible parties unless its
18 terms so provide, but it reduces the potential li-
19 ability of the others by the amount of the settle-
20 ment; and

21 “(E) provisions through which the settling
22 parties shall receive reimbursement from the
23 Fund for any response costs incurred by such
24 parties in excess of the aggregate of their allo-
25 cated share and any premia required by the set-

1 tlement. Such right to reimbursement shall not
2 be contingent on the United States recovery of
3 response costs from any responsible person not
4 a party to any settlement with the United
5 States.

6 “(4) The President shall report annually to
7 Congress on the administration of the allocation
8 scheme, and provide information comparing alloca-
9 tion results with actual settlements at multiparty fa-
10 cilities.

11 “(5) The provisions of this section shall not
12 apply to any offer of settlement made after com-
13 mencement of litigation by the United States against
14 the offering party under section 107 of this title.

15 “(h) AUTHORIZATION OF REIMBURSEMENT.—In any
16 settlement in which a party agrees to perform response
17 work in excess of its share, the Administrator shall have
18 authority in entering the settlement to confer a right of
19 reimbursement on the settling party pursuant to such pro-
20 cedures as the Administrator may prescribe.

21 “(i) POST-SETTLEMENT LITIGATION.—

22 “(1) IN GENERAL.—The United States may
23 commence an action under section 107 against any
24 person who has not resolved its liability to the
25 United States following allocation, on or after 60

1 days following issuance of the allocator's report. In
2 any such action, the potentially responsible parties
3 shall be liable for all unrecovered response costs, in-
4 cluding any federally funded orphan share identified
5 in accordance with subsection (d)(4). Defendants in
6 any such action may implead any allocation party
7 who did not resolve its liability to the United States.
8 The Administrator and the Attorney General shall
9 issue guidelines to ensure that the relief sought
10 against de minimis parties under principles of joint
11 and several liability will not be grossly disproportion-
12 ate to their contribution to the facility. The applica-
13 tion of such guidelines is committed to the discretion
14 of the Administrator and the Attorney General.

15 “(2) In commencing any action under section
16 107 following allocation, the Attorney General must
17 certify, in the complaint, that the United States has
18 been unable to reach a settlement that would be in
19 the best interests of the United States.

20 “(3) ADMISSIBILITY OF ALLOCATOR'S RE-
21 PORT.—The allocator's report shall not be admissi-
22 ble in any court with respect to a claim brought by
23 or against the United States, except in its capacity
24 as a nonsettling potentially responsible party, or for
25 the determination of liability. The allocator's report,

1 subject to the rules and discretion of the court, may
2 be admissible solely for the purpose of assisting the
3 court in making an equitable allocation of response
4 costs among the relative shares of nonsettling liable
5 parties.

6 “(4) OTHER AUTHORITIES UNAFFECTED.—
7 Nothing in this section limits or in any way affects
8 the exercise of the President’s authority pursuant to
9 sections 103, 104, 105, or 106.

10 “(5) COSTS.—

11 “(A) The costs of implementing the alloca-
12 tion procedure set forth in this section, includ-
13 ing reasonable fees and expenses of the allo-
14 cator, shall be considered necessary cost of re-
15 sponse.

16 “(B) The costs attributable to any funding
17 of orphan shares identified by the allocator pur-
18 suant to subsection (d)(4) also shall be consid-
19 ered necessary costs of response, and shall be
20 recoverable from liable parties who do not re-
21 solve their liability on the basis of the alloca-
22 tion.

23 “(6) REJECTION OF SHARE DETERMINATION.—

24 In any action by the United States under this title,
25 if the United States has rejected an offer of settle-

1 ment that is consistent with subsections (g)(1) and
2 (g)(3) of this section and was presented to the
3 United States prior to the commencement of the ac-
4 tion, the offeror shall be entitled to recover from the
5 United States the offeror's reasonable costs of de-
6 fending the action after the making of the offer, in-
7 cluding reasonable attorneys' fees, if the ultimate
8 resolution of liability or allocation of costs with re-
9 spect to the offeror, taking into account all settle-
10 ments and reimbursements with respect to the facil-
11 ity other than those attributable to insurance or in-
12 demnification, is as or more favorable to the offeror
13 than the offer based on the allocation.

14 “(j) PROCEDURES.—The Administrator shall further
15 define the procedures of this section by regulation or guid-
16 ance, after consultation with the Attorney General.”.

17 **TITLE V—REMEDY SELECTION AND**
18 **CLEANUP STANDARDS**

19 **SEC. 501. PURPOSES AND OBJECTIVES.**

20 The purposes and objectives of this title are to—

- 21 (a) ensure that remedial actions under the Act
22 are protective of human health and the environment;
23 (b) provide consistent and equivalent protection
24 to all communities affected by facilities subject to re-
25 medial action; and

1 (c) ensure that the national goals, national ge-
2 neric cleanup levels, and the national risk protocol
3 required by this title are developed through a proc-
4 ess based on substantial public input and, where ap-
5 propriate, on consensual decisionmaking.

6 **SEC. 502. CLEANUP STANDARDS AND LEVELS.**

7 Section 121(d)(1)–(2)(C)(i) of the Act (42 U.S.C.
8 9621(d)) is amended to read as follows:

9 “(d) DEGREE OF CLEANUP.—

10 “(1) PROTECTION OF HUMAN HEALTH AND
11 THE ENVIRONMENT.—A remedial action selected
12 under this section or otherwise required or agreed to
13 by the President under this Act shall be protective
14 of human health and the environment. In order to
15 provide consistent protection to all communities, the
16 Administrator shall promulgate national goals to be
17 applied at all facilities subject to remedial action
18 under this Act.

19 “(2) GENERIC CLEANUP LEVELS.—The Admin-
20 istrator shall promulgate, as appropriate, national
21 generic cleanup levels for specific hazardous sub-
22 stances, pollutants, or contaminants, based on the
23 national goals established in paragraph (1). A clean-
24 up level shall—

1 “(A) reflect reasonably anticipated future
2 land uses,

3 “(B) reflect other variables which can be
4 easily measured at a facility and whose effects
5 are scientifically well-understood to vary on a
6 site-specific basis, and

7 “(C) represent concentration levels below
8 which a response action is not required.

9 “(3) SITE-SPECIFIC METHODS TO ESTABLISH
10 CLEANUP LEVELS.—Notwithstanding the promulga-
11 tion of national generic cleanup levels under sub-
12 section (d)(2) and nationally-approved generic rem-
13 edies under subsection (b)(4) of this section, the Ad-
14 ministrator may, as appropriate, rely on a site-spe-
15 cific risk assessment to determine the proper level of
16 cleanup at a facility, based on the national goals es-
17 tablished in paragraph (1) and the reasonably antici-
18 pated future land uses at the facility. This may
19 occur if a national generic cleanup level has not been
20 developed or to account for particular characteristics
21 of a facility or its surroundings. In establishing site-
22 specific cleanup levels, the President shall consider
23 the views of the affected community in accordance
24 with section 117 of this Act.

1 “(4) RISK ASSESSMENT.—The Administrator
2 shall promulgate a national risk protocol for con-
3 ducting risk assessments based on realistic assump-
4 tions. After promulgation, risk assessment underly-
5 ing the degree of cleanup and remedy selection proc-
6 esses shall use the national risk protocol.

7 “(5) FEDERAL AND STATE LAWS.—

8 “(A) A remedial action shall be required to
9 comply with the substantive requirements of—

10 “(i) any standard, requirement, cri-
11 terion, or limitation under any federal en-
12 vironmental or facility siting law that the
13 President determines is suitable for appli-
14 cation to the remedial action at the facil-
15 ity; and

16 “(ii) any promulgated standard, re-
17 quirement, criterion, or limitation under
18 any state environmental law specifically
19 addressing remedial action that is adopted
20 for the purpose of protecting human health
21 or the environment with the best avail-
22 able scientific evidence through a public
23 process where such a law is more stringent
24 than any such federal cleanup standard,
25 requirement, criterion, or limitation, or the

1 cleanup level determined in accordance
2 with the requirements of this section.

3 “(B) Procedural requirements of federal
4 and state standards, requirements, criteria, or
5 limitations, including but not limited to permit-
6 ting requirements, shall not apply to response
7 actions conducted on-site. In addition, compli-
8 ance with such laws shall not be required with
9 respect to return, replacement, or disposal of
10 contaminated media or residuals of contami-
11 nated media into the same medium in or very
12 near existing areas of contamination on-site.

13 “(C) The President may select a remedial
14 action meeting the requirements of paragraph
15 (1) that does not attain a level or standard of
16 control at least equivalent to the federal or
17 State standards, requirements, criteria, or limi-
18 tations as required by paragraph (A), if the
19 President finds that—

20 “(i) the remedial action selected is
21 only part of a total remedial action that
22 will attain such level or standard of control
23 when completed;

24 “(ii) compliance with such require-
25 ment at that facility will result in greater

1 risk to human health and the environment
2 than alternative options;

3 “(iii) compliance with such require-
4 ments is technically impracticable from an
5 engineering perspective;

6 “(iv) a generic remedy under section
7 (b)(4) has been selected for the facility;

8 “(v) the remedial action selected will
9 attain a standard of performance that is
10 equivalent to that required under the
11 standard, requirement, criterion, or limita-
12 tion identified under (A)(i) and (A)(ii)
13 through use of another approach;

14 “(vi) with respect to a State standard,
15 requirement, criterion, or limitation, the
16 State has not consistently applied (or dem-
17 onstrated the intention to consistently
18 apply) the standard, requirement, criterion,
19 or limitation in similar circumstances at
20 other remedial actions within the State; or

21 “(vii) in the case of a remedial action
22 to be undertaken solely under section 104
23 using the Fund, a selection of a remedial
24 action that attains such level or standard
25 of control will not provide a balance be-

1 tween the need for protection of public
2 health and welfare and the environment at
3 the facility under consideration, and the
4 availability of amounts from the Fund to
5 respond to other facilities which present or
6 may present a threat to public health or
7 welfare or the environment, taking into
8 consideration the relative immediacy of
9 such threat.

10 The President shall publish such findings, to-
11 gether with an explanation and appropriate doc-
12 umentation.”.

13 **SEC. 503. REMEDY SELECTION.**

14 Section 121(b) of the Act (42 U.S.C. 9621(b)) is
15 amended to read as follows:

16 “(b) GENERAL RULES.—

17 “(1) SELECTION OF PROTECTIVE REMEDIES.—

18 Remedies selected at individual facilities shall be
19 protective of human health and the environment.
20 Whether a response action requires remediation
21 through treatment, containment, a combination of
22 treatment and containment, or other means, shall be
23 determined through the evaluation of remedial
24 alternatives.

1 “(2) LAND USE.—In selecting a remedy, the
2 President shall take into account the reasonably an-
3 ticipated future uses of land at a facility as required
4 by this Act.

5 “(3) APPROPRIATE REMEDIAL ACTION.—

6 “(A) The President shall identify and se-
7 lect an appropriate remedy utilizing treatment,
8 containment, other remedial measures, or any
9 combination thereof, that is protective of
10 human health and the environment and
11 achieves the degree of cleanup determined
12 under section 121(d), taking into account the
13 following factors:

14 “(i) The effectiveness of the remedy.

15 “(ii) The long-term reliability of the
16 remedy, that is, its capability to achieve
17 long-term protection of human health and
18 the environment.

19 “(iii) Any risk posed by the remedy to
20 the affected community, to those engaged
21 in the cleanup effort, and to the environ-
22 ment.

23 “(iv) The acceptability of the remedy
24 to the affected community.

1 “(v) The reasonableness of the cost of
2 the remedy in relation to the preceding
3 factors (i) through (iv).

4 “(B) INNOVATIVE REMEDIES.—If an oth-
5 erwise appropriate treatment remedy is avail-
6 able only at a disproportionate cost and the
7 President determines that an appropriate treat-
8 ment remedy is likely to become available with-
9 in a reasonable period of time, the President
10 may select an interim containment remedy. A
11 selected interim containment remedy shall in-
12 clude adequate monitoring to ensure the contin-
13 ued integrity of the containment system. If an
14 appropriate treatment remedy becomes available
15 within that period of time, that remedy shall be
16 required.

17 “(C) HOT SPOTS.—In evaluating a facility
18 for a permanent containment remedy, if the
19 President determines, based on standard site
20 investigation, that a discrete area within a facil-
21 ity is a ‘hot spot’ (as defined in this para-
22 graph), the President shall select a remedy for
23 the ‘hot spot’ with a preference for treatment,
24 unless he determines, based on treatability
25 studies and other information, that no treat-

1 ment technology exists or such technology is
2 only available at a disproportionate cost. In
3 such instances the President shall select an in-
4 terim containment remedy for a ‘hot spot’ sub-
5 ject to adequate monitoring to ensure its con-
6 tinued integrity and shall review the interim
7 containment remedy within five years to deter-
8 mine whether an appropriate treatment remedy
9 for the ‘hot spot’ is available. For purposes of
10 this paragraph, the term ‘hot spot’ means a dis-
11 crete area within a facility that contains haz-
12 ardous substances that are highly toxic or high-
13 ly mobile, cannot be reliably contained, and
14 present a significant risk to human health or
15 the environment should exposure occur.

16 “(4) GENERIC REMEDIES.—In order to stream-
17 line the remedy selection process, and to facilitate
18 rapid voluntary action, the President shall establish,
19 taking into account the factors enumerated in sub-
20 section (b)(3)(A), cost-effective generic remedies for
21 categories of facilities, and expedited procedures that
22 include community involvement for selecting generic
23 remedies at an individual facility. To be eligible for
24 selection at a facility, a generic remedy shall be pro-
25 tective of human health and the environment at that

1 facility. When appropriate, the President may select
2 a generic remedy without considering alternative
3 remedies.”.

4 **SEC. 504. MISCELLANEOUS AMENDMENTS TO SECTION 121.**

5 (a) Section 121(c) of the Act (42 U.S.C. 9621(c))
6 is amended by striking out the word “initiation”, and in-
7 serting in lieu thereof the phrase “completion of all phys-
8 ical on-site construction”.

9 (b) Section 121(d) of the Act is further amended
10 by—

11 (1) redesignating paragraph (2)(C)(ii) as para-
12 graph “(6)(A)”;

13 (2) redesignating paragraph (2)(C)(iii) as para-
14 graph “(6)(B)”;

15 (3) striking “clauses (iii) and (iv)” in redesi-
16 gnated paragraph (6)(A) and inserting “subpara-
17 graph (B)”;

18 (4) striking paragraph (2)(C)(iv);

19 (5) redesignating paragraph (3) as paragraph
20 “(7)” and amending it to read as follows:

21 “(7) In the case of any removal or remedial ac-
22 tion involving the transfer of any hazardous sub-
23 stance or pollutant or contaminant off-site, such
24 hazardous substance or pollutant or contaminant
25 shall be transferred to a facility which is authorized

1 under applicable Federal and state law to receive
2 such hazardous substance or pollutant or contami-
3 nant and is in compliance with such applicable Fed-
4 eral and state law. Such substance or pollutant or
5 contaminant may be transferred to a land disposal
6 facility permitted under subtitle C of the Solid
7 Waste Disposal Act only if the President determines
8 that both of the following requirements are met:

9 “(A) The unit to which the hazardous sub-
10 stance or pollutant or contaminant is trans-
11 ferred is not releasing any hazardous waste, or
12 constituent thereof, into the groundwater or
13 surface water or soil.

14 “(B) All such releases from other units at
15 the facility are being controlled by a corrective
16 action program approved by the Administrator
17 under subtitle C of the Solid Waste Disposal
18 Act.

19 The President shall notify the owner or operator of
20 such facility of determinations made under this
21 paragraph.”; and

22 (6) striking paragraph (4).

23 (c) Section 121(e) of the Act (42 U.S.C. 9621(e)) is
24 amended by—

1 (1) in paragraph (1) inserting in the first sen-
2 tence “or permit application” before “shall be re-
3 quired”; and by adding at the end thereof the follow-
4 ing: “Furthermore, no Federal, State or local permit
5 or permit application shall be required for on-site or
6 off-site activities conducted under section 311(b).”;
7 and

8 (2) striking paragraph (2).

9 (d) Section 121(f) of the Act (42 U.S.C. 9621(f)) is
10 amended by adding after paragraph (3) (as amended by
11 this Act) the following new paragraph:

12 “(4) A State may enforce only those Federal or
13 State legally applicable standards, requirements, cri-
14 terion, or limitations to which the Administrator has
15 determined the remedial action is required to con-
16 form under this Act. Where the parties agree, the
17 consent decree may provide for administrative en-
18 forcement. Each consent decree shall also contain
19 stipulated penalties for violations of the decree in an
20 amount not to exceed \$25,000 per day. Such stipu-
21 lated penalties shall not be construed to impair or
22 affect the authority of the court to order compliance
23 with the specific terms of any such decree.”.

1 **SEC. 505. RESPONSE AUTHORITIES.**

2 (a) Section 104(b)(1) of the Act (42 U.S.C.
3 9604(b)(1)) is amended by—

4 (1) inserting “actions,” before “studies”;

5 (2) striking “, to recover the costs thereof, and”
6 and inserting “or”; and

7 (3) striking the “.” after “Act” and inserting
8 “and shall be entitled to recover the costs thereof.”.

9 (b) Section 104(j) of the Act (42 U.S.C. 9604(j)) is
10 amended by—

11 (1) in paragraph (1) by striking “remedial”,
12 and inserting “response”;

13 (2) striking paragraph (2);

14 (3) redesignating paragraph (3) as paragraph
15 “(2)” and striking “estate” and inserting “prop-
16 erty”; and

17 (4) by inserting after paragraph (2) (as redesign-
18 nated by this Act) the following new paragraph:

19 “(4) DISPOSAL AUTHORITY.—The President is
20 authorized to dispose of any interest in real property
21 acquired for use by the Administrator under this
22 subsection by sale, exchange, donation or otherwise
23 and any such interest in real property shall not be
24 subject to any of the provisions of section 120 except
25 the notice provisions of Section 120(h)(1). Any mon-

1 eys received by the President pursuant to this sub-
2 paragraph shall be deposited in the Fund.”.

3 **SEC. 506. REMOVAL ACTIONS.**

4 (a) Section 104(c)(1) of this Act is amended in sub-
5 paragraph (C) as follows—

6 (1) strike “\$2,000,000” and insert
7 “\$6,000,000”;

8 (2) strike “12 months” and insert “three
9 years”; and

10 (3) strike “consistent with the remedial action
11 to be taken” and insert “not inconsistent with any
12 remedial action that has been selected or is antici-
13 pated at the time of the removal action.”.

14 (b) Section 117 of the Act is amended by adding after
15 subsection (k) (as added by this Act) the following new
16 subsection:

17 “(l) REMOVAL ACTIONS.—Whenever the planning pe-
18 riod for a removal action is expected to be greater than
19 six months, the Administrator shall provide the commu-
20 nity with notice of the anticipated removal action and a
21 public comment period of no less than thirty days.”.

22 **SEC. 507. TRANSITION.**

23 The provisions of this title shall become effective on
24 the date of enactment of this Act and shall apply to all
25 response actions for which a Record of Decision or other

1 decision document is signed after the date of enactment
2 of the Act.

3 **TITLE VI—MISCELLANEOUS**

4 **SEC. 601. INTERAGENCY AGREEMENTS AT MIXED OWNER-**
5 **SHIP AND MIXED RESPONSIBILITY FACILI-**
6 **TIES.**

7 Section 120(e) of the Act (42 U.S.C. 9620(e)) is
8 amended by—

9 (a) inserting after paragraph (3) the following
10 new paragraph:

11 “(4) A provision allowing for the participation
12 of other responsible parties in the response action;”
13 and

14 (b) inserting after paragraph (6) the following
15 new paragraphs:

16 “(7) EXCEPTION TO REQUIRED ACTION.—No
17 department, agency, and instrumentality of the
18 United States that owns or operates a facility over
19 which the department, agency, or instrumentality ex-
20 exercised no regulatory or other control over activities
21 that directly or indirectly resulted in a release or
22 threat of a release of a hazardous substance shall be
23 subject to the requirements of paragraphs (1)
24 through (6) except (5)(F) and (G) of this subsection
25 if the department, agency, or instrumentality dem-

1 onstrates to the satisfaction of the Administrator
2 that—

3 “(A) no department, agency, or instrumen-
4 tality was the primary or sole source or cause
5 of a release or threat of release of a hazardous
6 substance at the facility;

7 “(B) the activities either directly or indi-
8 rectly resulting in a release or threat of a re-
9 lease of a hazardous substance at the facility
10 were pursuant to a statutory authority and oc-
11 curred prior to 1976; and

12 “(C) the person or persons primarily or
13 solely responsible for such release or threat of
14 release are financially viable, and capable of
15 performing or financing the response action at
16 the facility.

17 In the event the above conditions are not met, the
18 applicable terms of section 120(e) apply to the de-
19 partment, agency, or instrumentality of the United
20 States at the facility. Upon determination by the
21 Administrator that a department, agency, or instru-
22 mentality qualifies for the exception provided by this
23 paragraph, the head of such department, agency, or
24 instrumentality may exercise enforcement authority
25 pursuant under section 106 (in addition to any other

1 delegated authorities). To the extent a person who
2 has been issued an order under the authority of this
3 paragraph seeks reimbursement under the provisions
4 of section 106, the relevant department, agency, or
5 instrumentality, and not the Fund, shall be the
6 source of any appropriate reimbursement. If the Ad-
7 ministrator determines that the relevant department,
8 agency, or instrumentality has failed to seek the per-
9 formance of response actions by responsible parties
10 within 12 months after the facility has been listed
11 on the National Priorities List, the Administrator
12 may void the exception provided by this paragraph
13 and the applicable provisions or section 120(e) would
14 apply to the department, agency or instrumentality
15 at the facility.

16 **SEC. 602. TRANSFERS OF UNCONTAMINATED PROPERTY.**

17 Section 120(h)(4)(A) of the Act (42 U.S.C.
18 9620(h)(4)(A)) is amended by striking the words “stored
19 for one year or more,”.

20 **SEC. 603. AGREEMENTS TO TRANSFER BY DEED.**

21 Section 120(h) of the Act (42 U.S.C. 9620(h)) is
22 amended by adding after paragraph (5) the following new
23 paragraph:

24 “(6) AGREEMENTS TO TRANSFER BY DEED.—

25 Nothing in this subsection shall be construed to pro-

1 hibit the head of the department, agency, or instru-
2 mentality of the United States from entering into an
3 agreement to transfer by deed real property or facili-
4 ties prior to the entering of such deed.”.

5 **SEC. 604. ALTERNATIVE OR INNOVATIVE TREATMENT**
6 **TECHNOLOGIES.**

7 Section 111(a) of the Act of 1980 is amended by add-
8 ing after paragraph (6) the following new paragraph:

9 “(7) ALTERNATIVE OR INNOVATIVE TREAT-
10 MENT TECHNOLOGIES.—

11 “(A) When a party potentially liable under
12 this Act undertakes a response action pursuant
13 to an administrative order or consent decree,
14 and employs an alternative or innovative tech-
15 nology that fails to achieve a level of response
16 required under this Act, the Administrator may
17 use the Fund to reimburse no more than fifty
18 percent of response costs incurred by the poten-
19 tially liable party in taking other actions ap-
20 proved by the Administrator to achieve these
21 required levels of response. The Administrator
22 shall issue guidance on the procedures and cri-
23 teria to be used in determining whether a reme-
24 dial technology constitutes an alternative or in-
25 novative technology for purposes of this sub-

1 section, and the appropriate level of funding for
2 response activities that are necessary to achieve
3 a level of response required under this Act. The
4 Administrator shall review and update such
5 guidance, as appropriate.”.

6 **SEC. 605. DEFINITIONS.**

7 Section 101 of the Act (42 U.S.C. 9601)) is amended
8 by—

9 (a) in paragraph (1) striking the “.” after
10 “Act” and inserting “and includes the cost of en-
11 forcement activities related thereto.”;

12 (b) in paragraph (10)(H) striking “subject to”
13 and inserting “in compliance with”;

14 (c) in paragraph (14) inserting after “Con-
15 gress” the phrase “, unless such waste contains a
16 substance that is listed under any other subpara-
17 graph of this paragraph”;

18 (d) in paragraph (20) by—

19 (1) in subparagraph (A) inserting after
20 “similar means to” the phrase “the United
21 States (or any department, agency, or instru-
22 mentality thereof), or”;

23 (2) in subparagraph (D) by inserting—

24 (A) after “does not include” the
25 phrase “the United States (or any depart-

1 ment, agency, or instrumentality thereof),
2 or”; and,

3 (B) before “any State” the phrase
4 “any department, agency, or instrumental-
5 ity of the United States, or”; and

6 (3) in subparagraph (D) by striking “a”
7 after “such” and inserting “department, agen-
8 cy, or instrumentality of the United States, or”;

9 (4) by adding after subparagraph (D) the
10 following new subparagraphs:

11 “(E) The term ‘owner or operator’ shall include
12 a trust or estate, but does not include a person who
13 holds title to a vessel or facility solely in the capacity
14 as a fiduciary, provided that such person—

15 “(i) does not participate in the manage-
16 ment of a vessel or facility operations that re-
17 sult in a release or threat of release of hazard-
18 ous substances; and

19 “(ii) complies with such other requirements
20 as the Administrator may set forth by regula-
21 tion.

22 “(F) The term ‘owner or operator’ shall not in-
23 clude the United States or any department, agency
24 or instrumentality of the United States or a con-
25 servator or receiver appointed by a department,

1 agency or instrumentality of the United States,
2 which acquired ownership or control of a vessel or
3 facility (or any right or interest therein)—

4 “(i) in connection with the exercise of re-
5 ceivership or conservatorship authority or the
6 liquidation or winding up of the affairs of any
7 entity subject to a receivership or
8 conservatorship, including any subsidiary there-
9 of; or

10 “(ii) in connection with the exercise of any
11 seizure or forfeiture authority; or

12 “(iii) pursuant to an act of Congress speci-
13 fying the property to be acquired:

14 *Provided*, That the United States, or conservator or
15 receiver appointed by the United States does not
16 participate in the management of the vessel or facil-
17 ity operations that result in a release or threat of re-
18 lease of hazardous substances and complies with
19 such other requirements as the Administrator may
20 set forth by regulation.”;

21 (e) in paragraph (23) adding at the end of the
22 paragraph the following: “The terms ‘remove’ or ‘re-
23 moval’ are not limited to emergency situations and
24 include actions to address future or potential expo-
25 sures and, provided such actions are consistent with

1 the requirements of this Act, actions obviating the
2 need for a remedial action.”;

3 (f) in paragraph (25) striking “related thereto”,
4 and inserting “and oversight activities related there-
5 to when such activities are undertaken by the Presi-
6 dent.”;

7 (g) in paragraph (29) striking the “.” after
8 “Act” and inserting “, except that the term “haz-
9 ardous substance” shall be substituted for the term
10 “hazardous waste” in the definitions of “disposal”
11 and “treatment.”;

12 (h) in paragraph (33) striking “; except that
13 the”, and inserting “. The”;

14 (i) adding after paragraph (38) the following
15 new paragraphs:

16 “(39) BONA FIDE PROSPECTIVE PURCHASER.—
17 The term ‘bona fide prospective purchaser’ means a
18 person who acquires ownership of a facility after en-
19 actment of this provision, and who can establish by
20 a preponderance of the evidence that—

21 “(A) all active disposal of hazardous sub-
22 stances at the facility occurred before that per-
23 son acquired the facility;

24 “(B) the person conducted a site audit of
25 the facility in accordance with commercially

1 reasonable and generally accepted standards
2 and practices. The Administrator shall have au-
3 thority to develop standards by guidance or reg-
4 ulation, or to designate standards promulgated
5 or developed by others, that satisfy this sub-
6 paragraph. In the case of property for residen-
7 tial or other similar use, a site inspection and
8 title search that reveal no basis for further in-
9 vestigation satisfy the requirements of this sub-
10 paragraph;

11 “(C) the person provided all legally re-
12 quired notices with respect to the discovery or
13 release of any hazardous substances at the fa-
14 cility;

15 “(D) the person exercised due care with re-
16 spect to hazardous substances found at the fa-
17 cility and took reasonably necessary steps to ad-
18 dress any release or threat of release of hazard-
19 ous substances and to protect human health
20 and the environment. The requirements of due
21 care and reasonably necessary steps with re-
22 spect to hazardous substances discovered at the
23 facility shall be conclusively established where
24 the person successfully completes a response ac-
25 tion pursuant to a State voluntary response

1 program, as defined in section 127 of this title;
2 and

3 “(E) the person provides full cooperation,
4 assistance, and facility access to those respon-
5 sible for response actions at the facility, includ-
6 ing the cooperation and access necessary for the
7 installation, integrity, operation, and mainte-
8 nance of any complete or partial response ac-
9 tion at the facility; and

10 “(F) the person is not affiliated with any
11 other person liable for response costs at the fa-
12 cility, through any direct or indirect familial re-
13 lationship, or any contractual, corporate, or fi-
14 nancial relationship other than that created by
15 the instruments by which title to the facility is
16 conveyed or financed.

17 “(40) FIDUCIARY.—

18 “(A) Except as provided in subparagraph
19 (B), the term ‘fiduciary’ means a person who
20 owns or controls property—

21 “(i) as a fiduciary within the meaning
22 of section 3(31) of the Employee Retire-
23 ment Income Security Act of 1974, or as
24 a trustee, executor, administrator, custo-
25 dian, guardian, conservator, or receiver

1 acting for the exclusive benefit of another
2 person; and

3 “(ii) who has not previously owned or
4 operated the property in a non-fiduciary
5 capacity.

6 “(B) The term ‘fiduciary’ does not include
7 any person described in subparagraph (A)—

8 “(i) who acquires ownership or control
9 of property to avoid the liability of such
10 person or any other person under this Act;
11 or

12 “(ii) who owns or controls property on
13 behalf of or for the benefit of a holder of
14 a security interest.

15 “(41) MUNICIPAL SOLID WASTE.—The term
16 ‘municipal solid waste’ means all waste materials
17 generated by households, including single and multi-
18 family residences, and hotels and motels. The term
19 also includes waste materials generated by commer-
20 cial, institutional, and industrial sources, to the ex-
21 tent such wastes (A) are essentially the same as
22 waste normally generated by households or (B) were
23 collected and disposed of with other municipal solid
24 waste or sewage sludge as part of normal municipal
25 solid waste collection services, and, regardless of

1 when generated, would be considered conditionally
2 exempt small quantity generator waste under section
3 3001(d) of the Solid Waste Disposal Act (42 U.S.C.
4 6921(d)). Examples of municipal solid waste include
5 food and yard waste, paper, clothing, appliances,
6 consumer product packaging, disposable diapers, of-
7 fice supplies, cosmetics, glass and metal food con-
8 tainers, elementary or secondary school science lab-
9 oratory waste, and household hazardous waste (such
10 as painting, cleaning, gardening, and automotive
11 supplies). The term ‘municipal solid waste’ does not
12 include combustion ash generated by resource recov-
13 ery facilities or municipal incinerators, or waste
14 from manufacturing or processing (including pollu-
15 tion control) operations not essentially the same as
16 waste normally generated by households.

17 “(42) MUNICIPALITY.—The term ‘municipality’
18 means a political subdivision of a State, including
19 cities, counties, villages, towns, townships, boroughs,
20 parishes, school districts, sanitation districts, water
21 districts, and other public entities performing local
22 governmental functions. The term also includes a
23 natural person acting in the capacity of an official,
24 employee, or agent of a municipality in the perform-
25 ance of governmental functions.

1 “(43) QUALIFIED HOUSEHOLD HAZARDOUS
2 WASTE COLLECTION PROGRAM.—The term ‘qualified
3 household hazardous waste collection program’
4 means a program established by an entity of the fed-
5 eral government, a state, municipality, or Indian
6 tribe that provides, at a minimum, for semiannual
7 collection of household hazardous wastes at acces-
8 sible, well-publicized collection points within the rel-
9 evant jurisdiction.

10 “(44) SEWAGE SLUDGE.—The term ‘sewage
11 sludge’ means solid, semisolid, or liquid residue re-
12 moved during the treatment of municipal waste
13 water, domestic sewage, or other waste water at or
14 by publicly-owned or federally-owned treatment
15 works.

16 “(45) SITE CHARACTERIZATION.—The term
17 ‘site characterization’ means an investigation that
18 determines the nature and extent of a release or po-
19 tential release of a hazardous substance, pollutant or
20 contaminant, and that includes an onsite evaluation
21 and sufficient testing, sampling and other field data
22 gathering activities to analyze whether there has
23 been a release or threat of a release of a hazardous
24 substance, pollutant or contaminant, and the health
25 and environmental risks posed by such a release or

1 threat of release. The investigation also may include
 2 review of existing information (available at the time
 3 of the review), an off-site evaluation, or other meas-
 4 ures as the Administrator deems appropriate.

5 “(46) VOLUNTARY RESPONSE.—The term ‘vol-
 6 untary response’ means a response action—

7 “(A) undertaken and financed by a current
 8 owner or prospective purchaser under a vol-
 9 untary response program; and

10 “(B) with respect to which the current
 11 owner or prospective purchaser agrees to pay all
 12 State oversight costs.”.

13 **SEC. 606. CONFORMING AMENDMENT.**

14 Section 126(a) of the Act (42 U.S.C. 9626(a)) is
 15 amended by adding, after “section 104(i) (regarding
 16 health authorities),” the phrase “section 127 (regarding
 17 State authority), section 120 (regarding voluntary re-
 18 sponse actions),”.

19 **TITLE VII—FUNDING**

20 **SEC. 701. AUTHORIZATION OF APPROPRIATIONS.**

21 Section 111(a) of the Act is amended by striking
 22 “\$8,500,000,000 for the 5-year period beginning on Octo-
 23 ber 17, 1986, and not more than \$5,100,000,000 for the
 24 period commencing October 1, 1991, and ending Septem-
 25 ber 30, 1994” and inserting “\$9,600,000,000 for the pe-

1 riod commencing October 1, 1994, and ending September
2 30, 1999”.

3 **SEC. 702. ORPHAN SHARE FUNDING.**

4 Section 111(a) is amended by adding after paragraph
5 (7) (as added by this Act) the following new paragraph:

6 “(8) ORPHAN SHARE FUNDING.—Payment of
7 orphan shares pursuant to section 122a(e) of this
8 Act.”.

9 **SEC. 703. AGENCY FOR TOXIC SUBSTANCES AND DISEASE**
10 **REGISTRY.**

11 Section 111(m) of the Act is amended to read as fol-
12 lows:

13 “(m) There shall be directly available to the Agency
14 for Toxic Substances and Disease Registry to be used for
15 the purpose of carrying out activities described in sub-
16 section (c)(4) of this section and section 104(i) of this Act
17 not less than \$80,000,000 per fiscal year for each of fiscal
18 years 1995, 1996, 1997, 1998, and 1999. Any funds so
19 made available which are not obligated by the end of the
20 fiscal year in which made available shall be turned to the
21 Fund.”.

22 **SEC. 704. LIMITATIONS ON RESEARCH, DEVELOPMENT,**
23 **AND DEMONSTRATION PROGRAMS.**

24 Section 111(n) of the Act is amended to read as fol-
25 lows:

1 “(1) SECTION 311(b).—For each of the fiscal
2 years 1995, 1996, 1997, 1998, and 1999, not more
3 than \$20,000,000 of the amounts available in the
4 Fund may be used for the purposes of carrying out
5 the applied research, development, and demonstra-
6 tion program for alternative or innovative tech-
7 nologies and training program authorized under sec-
8 tion 311(b) of this title (relating to research, devel-
9 opment, demonstration) other than basic research.
10 Such amounts shall remain available until expended.

11 “(2) SECTION 311(a).—From the amounts
12 available in the Fund, not more than the following
13 amounts may be used for the purposes of section
14 311(a) of this title (relating to hazardous substance
15 research, demonstration, and training activities):

16 “(A) For fiscal year 1995 \$40,000,000.

17 “(B) For fiscal year 1996 \$50,000,000.

18 “(C) For fiscal year 1997 \$55,000,000.

19 “(D) For fiscal year 1998 \$55,000,000.

20 “(E) For fiscal year 1999 \$55,000,000.

21 No more than 10 percent of such amounts shall be
22 used for training under section 311(a) of this title
23 for any fiscal year.

24 “(3) SECTION 311(d).—For each of the fiscal
25 years 1995, 1996, 1997, 1998, and 1999, not more

1 than \$5,000,000 of the amounts available in the
2 Fund may be used for the purposes of section
3 311(d) of this title (relating to university hazardous
4 substance research centers).”.

5 **SEC. 705. AUTHORIZATION OF APPROPRIATIONS FROM**
6 **GENERAL REVENUES.**

7 Section 111(p)(1) of the Act is amended to read as
8 follows:

9 “(1) IN GENERAL.—The following sums are au-
10 thorized to be appropriated, out of any money in the
11 Treasury not otherwise appropriated, to the Hazard-
12 ous Substance Superfund:

13 “(A) For fiscal year 1995, \$250,000,000.

14 “(B) For fiscal year 1996, \$250,000,000.

15 “(C) For fiscal year 1997, \$250,000,000.

16 “(D) For fiscal year 1998, \$250,000,000.

17 “(E) For fiscal year 1999, \$250,000,000.

18 In addition there is authorized to be appropriated to
19 the Hazardous Substance Superfund for each fiscal
20 year an amount equal to so much of the aggregate
21 amount authorized to be appropriated under this
22 subsection (and paragraph (2) of section 131(b) of
23 this title) as has not been appropriated before the
24 beginning of the fiscal year involved.”.

1 **SEC. 706. ADDITIONAL LIMITATIONS.**

2 Section 111 of the Act is amended by adding after
3 subsection (p) the following new subsections:

4 “(q) ALTERNATIVE OR INNOVATIVE TREATMENT
5 TECHNOLOGIES.—For each of the fiscal years 1995,
6 1996, 1997, 1998, and 1999, not more than \$40,000,000
7 of the amounts available in the Fund may be used for the
8 purposes of subsection (a)(7) of this section (relating to
9 alternative or innovative treatment technologies).

10 “(r) CITIZEN INFORMATION AND ACCESS OF-
11 FICES.—For each of the fiscal years 1995, 1996, 1997,
12 1998, and 1999, not more than \$50,000,000 of the
13 amounts available in the Fund may be used for the pur-
14 poses of section 117(j) of this Act (relating to citizen in-
15 formation and access offices).

16 “(s) MULTIPLE SOURCES OF RISK DEMONSTRATION
17 PROJECTS.—For the period commencing October 1, 1994
18 and ending September 30, 1999, not more than
19 \$30,000,000 of the amounts available in the Fund may
20 be used for the purposes of section 117(k) if this Act (re-
21 lating to multiple sources of risk demonstration
22 projects).”.

1 **TITLE VIII—ENVIRONMENTAL INSURANCE**
2 **RESOLUTION FUND**

3 **SEC. 801. SHORT TITLE.**

4 This title may be cited as the “Environmental Insur-
5 ance Resolution and Equity Act of 1994”.

6 **SEC. 802. ENVIRONMENTAL INSURANCE RESOLUTION**
7 **FUND.**

8 (a) ENVIRONMENTAL INSURANCE RESOLUTION
9 FUND ESTABLISHED.—There is hereby established the
10 Environmental Insurance Resolution Fund (hereinafter
11 referred to as the “Resolution Fund”).

12 (b) OFFICES.—The principal office of the Resolution
13 Fund shall be in the District of Columbia or at such other
14 place as the Resolution Fund may from time to time pre-
15 scribe.

16 (c) STATUS OF RESOLUTION FUND.—Except as ex-
17 pressly provided in this title, the Resolution Fund shall
18 not be considered an agency or establishment of the
19 United States. The members of the Board of Trustees
20 shall not, by reason of such membership, be deemed to
21 be officers or employees of the United States.

22 (d) BOARD OF TRUSTEES.—

23 (1) IN GENERAL.—The Resolution Fund shall
24 be administered by a Board of Trustees (Board).

1 (2) MEMBERSHIP.—The Board shall consist of
2 the following:

3 (A) GOVERNMENTAL MEMBERS.—

4 (i) The Administrator of the Environ-
5 mental Protection Agency.

6 (ii) The Attorney General of the
7 United States.

8 (B) PUBLIC MEMBERS.—Five public mem-
9 bers appointed by the President not later than
10 60 days after the date of enactment of this
11 title, not less than two of whom shall represent
12 insurers subject section ____ of the Internal
13 Revenue Code of 1986, and not less than two
14 of whom shall represent eligible persons defined
15 in subsection (g)(2)(A). The public members
16 shall be citizens of the United States.

17 (C) EX-OFFICIO MEMBER.—The Secretary
18 of the Treasury shall serve as an ex officio
19 member of the Board.

20 (3) CHAIR.—The Chair of the Board shall be
21 designated by the President from time to time from
22 among the members described in paragraph (2)(A).
23 No expenditure may be made, or other action taken,
24 by the Resolution Fund without the concurrence of
25 the Chair of the Board.

1 (4) COMPENSATION.—Governmental members
2 of the Board shall serve without additional com-
3 pensation. Public members of the Board shall, while
4 attending meetings of the Board or while engaged in
5 duties related to such meetings or other activities of
6 the Board pursuant to this title, be entitled to re-
7 ceive compensation at the rate of \$200 per day, in-
8 cluding travel time. While away from their homes or
9 regular places of business, members of the Board
10 shall be allowed travel and actual, reasonable and
11 necessary expenses to the same extent as officers of
12 the United States.

13 (5) TERM OF PUBLIC MEMBERS.—Public mem-
14 bers of the Board shall serve for a term of 5 years,
15 except that such members may be removed by the
16 President for any reason at any time. A public mem-
17 ber whose term has expired may continue to serve
18 on the Board until such time as the President ap-
19 points a successor. The President may reappoint a
20 public member of the Board, but no such member
21 may consecutively serve more than two terms.

22 (6) VACANCIES.—A vacancy on the Board shall
23 be filled in the same manner as the original appoint-
24 ment, except that such appointment shall be for the
25 balance of the unexpired term of the vacant position.

1 (7) QUORUM.—Four members of the Board
2 shall constitute a quorum for the conduct of busi-
3 ness.

4 (8) MEETINGS.—The Board shall meet not less
5 than quarterly at the call of the Chair. Meetings of
6 the Board shall be open to the public unless the
7 Board, by a majority vote of members present in
8 open session, determines that it is necessary or ap-
9 propriate to close a meeting. The Chair shall provide
10 at least 10 days notice of a meeting by publishing
11 a notice in the Federal Register and such notice
12 shall indicate whether it is expected that the Board
13 will consider closing all or a portion of the meeting.
14 Nothing in this paragraph shall be construed to
15 apply to informal discussions or meetings among
16 Board members.

17 (e) OFFICERS AND EMPLOYEES.—

18 (1) CHIEF EXECUTIVE OFFICER; CHIEF FINAN-
19 CIAL OFFICER.—

20 (A) The Resolution Fund shall have a
21 Chief Executive Officer appointed by the Board
22 who shall exercise any authority of the Resolu-
23 tion Fund under such terms and conditions as
24 the Board may prescribe.

1 (B) The Resolution Fund shall have a
2 Chief Financial Officer appointed by the Board.

3 (2) COMPENSATION.—No officer or employee of
4 the Resolution Fund may be compensated by the
5 Resolution Fund at an annual rate of pay which ex-
6 ceeds the rate of basic pay in effect from time to
7 time for level I of the Executive Schedule under sec-
8 tion 5312 of title 5, United States Code. No officer
9 or employee of the Resolution Fund, other than a
10 member of the Board, may receive any salary or
11 other compensation from any source other than the
12 Resolution Fund for services rendered during the pe-
13 riod of employment by the Resolution Fund.

14 (3) POLITICAL TEST OR QUALIFICATION.—No
15 political test or qualification shall be used in select-
16 ing, appointing, promoting, or taking other person-
17 nel actions with respect to officers, agents, and em-
18 ployees of the Resolution Fund.

19 (4) ASSISTANCE BY FEDERAL AGENCIES.—The
20 Attorney General, the Secretary of the Treasury,
21 and the Administrator of the Environmental Protec-
22 tion Agency, may to the extent practicable and fea-
23 sible, and in their sole discretion, make personnel
24 and other resources available to the Resolution
25 Fund. Such personnel and resources may be pro-

1 vided on a reimbursable basis, and any personnel so
2 provided shall not be considered employees of the
3 Resolution Fund for purposes of paragraph (2).

4 (f) POWERS OF RESOLUTION FUND.—Notwithstand-
5 ing any other provision of law, except as provided in this
6 title or as may be hereafter enacted by the Congress ex-
7 pressly in limitation of the provisions of this paragraph,
8 the Resolution Fund shall have power—

9 (1) to have succession until dissolved by Act of
10 Congress;

11 (2) to make and enforce such bylaws, rules and
12 regulations as may be necessary or appropriate to
13 carry out the purposes of this title;

14 (3) to make and perform contracts, agreements,
15 and commitments;

16 (4) to settle, adjust, and compromise, and with
17 or without consideration or benefit to the Resolution
18 Fund release or waive in whole or in part, in ad-
19 vance or otherwise, any claim, demand, or right of,
20 by, or against the Resolution Fund;

21 (5) to sue and be sued, complain and defend, in
22 any State, Federal or other court;

23 (6) to determine its necessary expenditures and
24 the manner in which the same shall be incurred, al-
25 lowed, and paid, and appoint, employ, and fix and

1 provide for the duties, compensation and benefits of
2 officers, employees, attorneys, and agents, all of
3 whom shall serve at the pleasure of the Board;

4 (7) to invest funds, through the Secretary of
5 the Treasury, in interest bearing securities of the
6 United States suitable to the needs of the Resolution
7 Fund: *Provided*, that interest earned on such invest-
8 ments shall be retained by the Resolution Fund and
9 used consistent with the purposes of this title;

10 (8) to hire or accept the voluntary services of
11 consultants, experts, advisory boards, and panels to
12 aid the Resolution Fund in carrying out the pur-
13 poses of this title; and

14 (9) to take such other actions as may be nec-
15 essary to carry out the responsibilities of the Resolu-
16 tion Fund under this title.

17 Nothing in this subsection or any other provision of this
18 title shall be construed to permit the Resolution Fund to
19 issue any evidence of indebtedness or otherwise borrow
20 money.

21 (g) RESOLUTION OF DISPUTES BETWEEN INSURED
22 AND INSURERS.—

23 (1) IN GENERAL.—The Resolution Fund shall
24 offer a comprehensive resolution described in this

1 subsection with respect to all eligible costs of an eli-
2 gible person at eligible sites.

3 (2) DEFINITIONS.—

4 (A) ELIGIBLE PERSON.—For purposes of
5 this subsection, the term “eligible person”
6 means any individual, firm, corporation, asso-
7 ciation, partnership, consortium, joint venture,
8 commercial entity or governmental unit (includ-
9 ing any predecessor in interest or any subsidi-
10 ary thereof) that satisfies the following criteria:

11 (i) STATUS AS POTENTIALLY RESPON-
12 SIBLE PARTY.—An eligible person—

13 (I) shall have been named at any
14 time as a potentially responsible party
15 pursuant to the Comprehensive Envi-
16 ronmental Response, Compensation
17 and Liability Act with respect to an
18 eligible site on the National Priority
19 List in connection with a hazardous
20 substance that was disposed of on or
21 before December 31, 1985; or

22 (II) is or was liable, or alleged to
23 be liable, at any time for removal (as
24 defined in section 101(23) of the
25 Comprehensive Environmental Re-

1 sponse, Compensation and Liability
2 Act (42 U.S.C. 9601(23)) at any eligi-
3 ble site in connection with a hazard-
4 ous substance that was disposed of on
5 or before December 31, 1985.

6 (ii) INSURANCE COVERAGE.—An eligi-
7 ble person shall have demonstrated, to the
8 satisfaction of the Resolution Fund, that
9 such person had entered into a valid con-
10 tract for comprehensive general liability
11 (including broad form liability, general li-
12 ability, commercial general liability, and
13 excess or umbrella coverage) or commercial
14 multi-peril (including broad form property,
15 commercial package, special multi-peril,
16 and excess or umbrella coverage) insurance
17 coverage—

18 (I) for any seven years in any
19 consecutive 14 year period prior to
20 January 1, 1986; or

21 (II) in the case of a person that
22 has been in existence for less than 14
23 years prior to January 1, 1986, for at
24 least one-half of such years of exist-
25 ence.

1 For purposes of this clause, a valid con-
2 tract for insurance shall not include any
3 contract for insurance with respect to
4 which a person has entered into a settle-
5 ment with an insurer providing, or where
6 a judgment has provided, that the contract
7 has been satisfied and that such person
8 has no right to make any further claims
9 under such contract.

10 (B) ELIGIBLE COSTS.—

11 (i) IN GENERAL.—For purposes of
12 this subsection, the term “eligible costs”
13 means costs described in clause (ii) or (iii)
14 incurred with respect to a hazardous sub-
15 stance that was disposed of on or before
16 December 31, 1958—

17 (I) for which an eligible person
18 has not been reimbursed; or

19 (II) for which an eligible person
20 has been reimbursed and that are the
21 subject of a dispute between the eligi-
22 ble person and an insurer.

23 (ii) NPL SITES.—With respect to an
24 eligible site described in subparagraph

1 (C)(i), eligible costs means costs described
2 in clause (i)—

3 (I) of response (as defined in sec-
4 tion 101(25) of the Comprehensive
5 Environmental Response, Compensa-
6 tion and Liability Act (42 U.S.C.
7 9601(25));

8 (II) for natural resources dam-
9 ages; or

10 (III) to defend potential liability
11 (including, but not limited to, attorney's
12 fees, costs of suit, consultant and expert
13 fees and costs, and expenses for testing
14 and monitoring).

15 (iii) NON-NPL SITES.—With respect to
16 an eligible site described in paragraph
17 (C)(ii), eligible costs means costs described
18 in clause (i)—

19 (I) of removal (as defined in sec-
20 tion 101(23) of the Comprehensive
21 Environmental Response, Compensa-
22 tion and Liability Act (42 U.S.C.
23 9601(23)); or

24 (II) to defend potential liability
25 (including, but not limited to, attor-

1 ney's fees, costs of suit, consultant
2 and expert fees and costs, and ex-
3 penses for testing and monitoring).

4 (iv) LIMIT ON ELIGIBLE COSTS.—

5 (I) Except as provided in
6 subclause (II), the eligible costs of an
7 eligible person may not exceed—

8 (aa) \$15,000,000 in the case
9 of an eligible person that has
10 demonstrated insurance coverage
11 pursuant to subparagraph
12 (A)(ii)(I); or

13 (bb) an amount equal to
14 one-seventh of \$15,000,000 for
15 each year of insurance coverage,
16 in the case of an eligible person
17 that has demonstrated insurance
18 coverage pursuant that has dem-
19 onstrated insurance coverage
20 pursuant to subparagraph
21 (A)(ii)(II).

22 (II) The limitation on eligible
23 costs provided in subclause (I) shall
24 not apply to an eligible costs provided
25 in subclause (I) shall not apply to an

1 eligible person that, when filing a re-
2 quest for a resolution offer with the
3 Resolution Fund, presents evidence to
4 the satisfaction of the Resolution
5 Fund that the limits on valid con-
6 tracts of insurance (including per oc-
7 currence, aggregate, primary, excess
8 or other limits) of such eligible person
9 prior to January 1, 1986, cumula-
10 tively exceed the amount determined
11 pursuant to subclause (I) without ref-
12 erence to any time period. For pur-
13 poses of this clause, a valid contract
14 for insurance shall not include any
15 contract for insurance with respect to
16 which an eligible person has entered
17 into a settlement with an insurer pro-
18 viding, or where a judgment has pro-
19 vided, that the contract has been sat-
20 isfied and that such eligible person
21 has no right to make any further
22 claims under such contract.

23 (C) ELIGIBLE SITE.—For purposes of this
24 subsection, the term “eligible site” means—

1 (i) any site or facility placed on the
2 National Priority List at any time, at
3 which a hazardous substance was disposed
4 of on or before December 31, 1985; or

5 (ii) any site or facility subject to a re-
6 moval (as defined in section 101(23) of the
7 Act (42 U.S.C. 9601(23)) conducted pur-
8 suant to such Act at any time, at which a
9 hazardous substance was disposed of on or
10 before December 31, 1985.

11 For purposes of this subparagraph, the term
12 “facility” shall have the same meaning as pro-
13 vided in section 101(9) of the Comprehensive
14 Environmental Response, Compensation and Li-
15 ability Act (42 U.S.C. 9601(9)).

16 (D) STATE.—For purposes of this sub-
17 section, the term “State” shall have the same
18 meaning as provided in section 101(27) of the
19 Comprehensive Environmental Response, Com-
20 pensation and Liability Act (42 U.S.C.
21 9601(27)).

22 (3) RESOLUTION OFFERS.—

23 (A) IN GENERAL.—The Resolution Fund
24 shall offer one comprehensive resolution to each
25 eligible person. The offer shall—

1 (i) be for a percentage of all the eligi-
2 ble costs of such eligible person incurred in
3 connection with all eligible sites, deter-
4 mined pursuant to paragraph (4); and

5 (ii) state the limitation on eligible
6 costs, if any, applicable to the eligible per-
7 son pursuant to paragraph (2)(B)(ii).

8 (B) REQUESTS FOR RESOLUTION OF-
9 FERS.—An eligible person shall file a request
10 for resolution from the Resolution Fund in such
11 form and manner as the Resolution Fund shall
12 prescribe. No such request shall be deemed re-
13 ceived by the Resolution Fund before the date
14 final regulations concerning State percentage
15 categories are published in the Federal Register
16 pursuant to paragraph 4(B)(iii). The Resolu-
17 tion Fund shall make an offer of resolution, de-
18 termined pursuant to paragraph (4), to each el-
19 igible person that has filed a request for an
20 offer of resolution not later than 180 days after
21 the receipt of a complete request as determined
22 by the Resolution Fund.

23 (C) REVIEW OF RESOLUTION OFFERS.—
24 No resolution offer made by the Resolution
25 Fund shall be subject to review by any court.

1 (4) DETERMINATION OF RESOLUTION OF-
2 FERS.—

3 (A) IN GENERAL.—The Resolution Fund
4 shall determine a resolution offer—

5 (i) in the case of an eligible person
6 that has established only one State litiga-
7 tion venue pursuant to subparagraph (C),
8 by applying the State percentage deter-
9 mined pursuant to subparagraph (B)(iii) to
10 the established State litigation venue;

11 (ii) in the case of an eligible person
12 that has established two or more State liti-
13 gation venues pursuant to subparagraph
14 (C), each site with respect to which a State
15 litigation venue has been established shall
16 be accorded equal value and the applicable
17 percentage shall be the weighted average of
18 all established State litigation venues; or

19 (iii) in the case of an eligible person
20 that has not established any State litiga-
21 tion venue pursuant to subparagraph
22 (C)—

23 (I) if the eligible person has po-
24 tential liability in connection with only
25 one hazardous waste site, by applying

1 the State percentage determined pur-
2 suant to subparagraph (B)(iii) to the
3 State in which the site is located; or

4 (II) if the eligible person has po-
5 tential liability in connection with
6 more than one hazardous waste site,
7 each site shall be accorded equal value
8 and the applicable percentage shall be
9 the weighted average of all States in
10 which the sites are located.

11 (B) STATE PERCENTAGE.—

12 (i) IN GENERAL.—The Congress finds
13 that as of January 1, 1994, State law gen-
14 erally is more favorable to eligible persons
15 that pursue claims concerning eligible costs
16 against insurers in some States, that State
17 law generally is more favorable to insurers
18 with respect to such claims in some States,
19 and that in some States the law generally
20 favors neither insurers nor eligible persons
21 with respect to such claims or that there is
22 insufficient information to determine
23 whether such law generally favors insurers
24 or eligible persons with respect to such
25 claims. The Congress further finds that

1 considerations of equity and fairness re-
2 quire that resolution offers made by the
3 Resolution Fund must vary to reflect the
4 relative state of the law among the several
5 States.

6 (ii) PROPOSED REGULATIONS.—The
7 Resolution Fund shall examine the law in
8 each State as of January 1, 1994. Not
9 later than 120 days after the date of en-
10 actment of this title, the Resolution Fund
11 shall publish in the Federal Register a no-
12 tice of proposed rulemaking soliciting pub-
13 lic comment for 60 days and classifying
14 States into the following percentage cat-
15 egories:

16 (I) 20 percent, in the case of the
17 ten States in which the Resolution
18 Fund determines that State law gen-
19 erally is most favorable to insurers
20 relative to the other States.

21 (II) 60 percent, in the case of the
22 ten States in which the Resolution
23 Fund determines that State law gen-
24 erally is most favorable to eligible per-
25 sons relative to the other States.

1 (III) 40 percent, in the case of
2 all other States.

3 (iii) FINAL REGULATIONS.—

4 (I) Not later than 60 days after
5 the close of the public comment pe-
6 riod, the Resolution Fund shall pub-
7 lish in the Federal Register final reg-
8 ulations providing State classifica-
9 tions.

10 (II) The State classifications pro-
11 vided in the final rule shall govern all
12 resolution offers made by the Resolu-
13 tion Fund and shall not be subject to
14 amendment by the Resolution Fund.

15 (III) Notwithstanding any other
16 provision of law, the final regulations
17 promulgated by the Resolution Fund
18 pursuant to this clause shall not be
19 subject to review by any court.

20 (C) LITIGATION VENUE.—For purposes of
21 this subsection, litigation venue is considered
22 established with respect to an eligible person
23 if—

24 (i) on or before December 31, 1993,
25 the eligible person had pending in a court

1 of competent jurisdiction a complaint or
2 cross complaint against an insurer with re-
3 spect to eligible costs at an eligible site;
4 and

5 (ii) no motion to change venue with
6 respect to such complaint was pending on
7 or before January 31, 1994.

8 (5) ACCEPTANCE OR REJECTION OF RESOLU-
9 TION OFFER.—

10 (A) IN GENERAL.—

11 (i) An eligible person may, when sub-
12 mitting a request for a resolution to the
13 Resolution Fund, make a written irrev-
14 ocable election to accept any resolution to
15 be made by the Resolution Fund.

16 (ii) An eligible person that does not
17 make an election pursuant to clause (i)
18 shall, within 60 days of the receipt of a
19 resolution offer from the Resolution Fund,
20 notify the Resolution Fund in writing of its
21 irrevocable acceptance or rejection of such
22 offer. An eligible person who does not so
23 accept or reject a resolution offer within
24 60 days shall be deemed to have made an
25 irrevocable election to reject the offer and

1 the provisions of subparagraph (C) shall
2 apply.

3 (B) RESOLUTION OFFER ACCEPTED.—An
4 eligible person that accepts a resolution offered
5 by the Resolution Fund shall be subject to the
6 provisions of this paragraph.

7 (i) WAIVER OF INSURANCE CLAIMS.—
8 The Resolution Fund shall not make pay-
9 ments to an eligible person unless the eligi-
10 ble person agrees in writing, subject to re-
11 instatement described in clause (ii)—

12 (I) to waive any existing and fu-
13 ture claims against any insurer for eli-
14 gible costs; and

15 (II) to stay or dismiss each claim
16 pending against an insurer for eligible
17 costs.

18 (ii) REINSTATEMENT OF INSURANCE
19 CLAIMS.—

20 (I) If the Resolution Fund fails
21 to timely fulfill its obligations to an
22 eligible person under the terms of an
23 accepted resolution offer, such eligible
24 person shall be entitled to reinstate

1 any claim under a contract for insur-
2 ance with respect to eligible costs.

3 (II) STATUTE OF LIMITATION
4 TOLLED.—Notwithstanding any other
5 provision of Federal or State law, any
6 Federal or State statute of limitation
7 concerning the filing or prosecution of
8 an action by an eligible person against
9 an insurer, or by an insurer against
10 an eligible person, with respect to eli-
11 gible costs shall be tolled during the
12 pendency of the stay of pending litiga-
13 tion established by section 804(a).

14 (iii) PAYMENT OF RESOLUTION OF-
15 FERS.—

16 (I) PRE-RESOLUTION COSTS.—
17 The Resolution Fund shall make
18 equal annual payments over a period
19 of eight years for eligible costs in-
20 curred by an eligible person on or be-
21 fore the date such person accepts a
22 resolution offer pursuant to subpara-
23 graph (A) (i) or (ii), and interest shall
24 not accrue with respect to such eligi-
25 ble costs. The Resolution Fund may,

1 in its sole discretion, make such pay-
2 ments over a shorter period if the ag-
3 gregate eligible costs do not exceed
4 \$50,000. An eligible person shall sub-
5 mit to the Resolution Fund docu-
6 mentation of such costs as the Resolu-
7 tion Fund may require. The initial
8 payment to an eligible person under
9 this subclause shall be made not later
10 than 60 days after the receipt of doc-
11 umentation satisfactory to the Resolu-
12 tion Fund.

13 (II) POST-RESOLUTION COSTS.—

14 The Resolution Fund shall make pay-
15 ments for eligible costs incurred by an
16 eligible person after the date such per-
17 son accepts a resolution offer pursu-
18 ant to subparagraph (A) (i) or (ii) to
19 the eligible person, or to a contractor
20 or other person designated by the eli-
21 gible person, subject to such docu-
22 mentation as the Resolution Fund
23 may require. Payments under this
24 subclause shall be made not later than
25 60 days after the receipt of docu-

1 mentation satisfactory to the Resolu-
2 tion Fund.

3 (III) ADJUSTMENT FOR DEDUCT-
4 IBLE OR SELF INSURANCE.—In the
5 case of an eligible person that has
6 submitted to the Resolution Fund, as
7 proof of status as an eligible person,
8 a contract for insurance described in
9 paragraph (2)(A)(ii) that is subject to
10 a self-insured retention or a deduct-
11 ible, payment to such eligible person
12 pursuant to a resolution shall be re-
13 duced by the amount of such self-in-
14 sured retention or deductible, except
15 that such reduction shall not exceed
16 the amount of one self-insured reten-
17 tion or one deductible that the eligible
18 person would have required to pay
19 with respect to one claim for eligible
20 costs under the terms of the contracts
21 for insurance submitted. In the event
22 that the eligible person submitted
23 more than one contract for insurance,
24 any such reduction shall be made with
25 respect to the lowest of the amounts

1 of self-insured retentions and
2 deductibles.

3 (IV) ADJUSTMENT FOR CERTAIN
4 DUTY-TO-DEFEND COSTS.—If an in-
5 surer has incurred and paid costs pur-
6 suant to a duty-to-defend clause con-
7 tained in a contract for insurance de-
8 scribed in paragraph (2)(B), and such
9 costs are the subject of a dispute be-
10 tween the eligible person and an in-
11 surer, the payment of a resolution to
12 an eligible person shall be reduced by
13 such amount, and the Resolution
14 Fund shall pay such amount to the
15 insurer. If such costs were paid by the
16 insurer on or before the date the eligi-
17 ble person accepted a resolution offer
18 made by the Resolution Fund, pay-
19 ment to an insurer under this
20 subclause shall be made in equal an-
21 nual installments over a period of
22 eight years, and interest shall not ac-
23 crue with respect to such costs. The
24 Resolution Fund may, in its sole dis-
25 cretion, make such payments over a

1 shorter period if the aggregate costs
2 do not exceed \$50,000.

3 (C) RESOLUTION OFFER REJECTED; LITI-
4 GATION OF INSURANCE CLAIMS.—

5 (i) ADMISSIBILITY OF RESOLUTION
6 OFFER.—No resolution offered by the Res-
7 olution Fund shall be admissible in any
8 legal action brought by an eligible person
9 against an insurer or by an insurer against
10 an eligible person.

11 (ii) INSURER ACTION AGAINST ELIGI-
12 BLE PERSON.—Any eligible person that re-
13 jects a resolution offer, litigates a claim
14 with respect to eligible costs against an in-
15 surer, and obtains a final judgment that is
16 less favorable than the resolution offered
17 by the Resolution Fund, shall be liable to
18 such insurer for 20 percent of the reason-
19 able costs and legal fees incurred by the
20 insurer in connection with such litigation
21 after the resolution was offered to the eli-
22 gible person. The district courts of the
23 United States shall have original jurisdic-
24 tion of all such actions, without regard to
25 amount or value. The court shall reduce

1 any award to an insurer in any such action
2 by the amount, if any, of such costs and
3 legal fees recovered by the insurer pursu-
4 ant to State law or court rule. Nothing in
5 this clause shall be construed to limit or
6 affect in any way the application of State
7 law, or the rule of any court, to such costs
8 or legal fees.

9 (iii) REIMBURSEMENT TO INSURER.—

10 In the case of an eligible person that re-
11 jects a resolution offer, litigates a claim
12 with respect to eligible costs against one or
13 more insurers, and obtains a final judg-
14 ment against any such insurer, the Resolu-
15 tion Fund—

16 (I) shall reimburse to such in-
17 surer or insurers the lesser of the
18 amount of the resolution offer made
19 to the eligible person or the final
20 judgment; and

21 (II) may, if the resolution offer
22 exceeded the final judgment, reim-
23 burse the insurer or insurers for unre-
24 covered reasonable costs and legal
25 fees, except that the total reimburse-

1 ment under this subclause may not
2 exceed the amount of the resolution
3 offer to the eligible person.

4 Reimbursements pursuant to this clause
5 shall be subject to such documentation as
6 the Resolution Fund may require and shall
7 be made by the Resolution Fund not later
8 than 60 days after receipt by the Resolu-
9 tion Fund of a complete request for reim-
10 bursement as determined by the Resolution
11 Fund.

12 (6) PAYMENTS CONSIDERED PURSUANT TO IN-
13 SURANCE CONTRACT.—Payments made by the Reso-
14 lution Fund pursuant to a resolution offer shall be
15 deemed payments made by an insurer under the
16 terms and conditions of a contract of insurance or
17 in settlement thereof. Nothing in this paragraph
18 shall be construed to affect in any way the issue of
19 whether the liability limits of a contract of insurance
20 has been satisfied.

21 (7) RESOLUTION PROCESS NOT ADMISSION OF
22 LIABILITY.—No provision of this title, and no action
23 by an eligible person undertaken in connection with
24 any provision of this title shall in any way constitute

1 an admission of liability in connection with the dis-
2 posal of a hazardous substance.

3 (8) REGULATIONS.—

4 (A) PROCEDURES AND DOCUMENTA-
5 TION.—Not later than 120 days after the date
6 of enactment of this title, the Resolution Fund
7 shall publish in the Federal Register for public
8 comment of not more than 60 days interim
9 final regulations concerning procedures and
10 documentation for the submission of requests
11 for resolution offers and the payment of accept-
12 ed resolution offers. Not later than 60 days
13 after the close of the public comment period,
14 the Resolution Fund shall publish in the Fed-
15 eral Register final regulations concerning such
16 procedures and documentation, which may be
17 amended by the Resolution Fund from time to
18 time.

19 (B) OTHER REGULATIONS.—The Resolu-
20 tion Fund may prescribe such other regulations,
21 rules and procedures as the Resolution Fund
22 deems appropriate from time to time.

23 (C) JUDICIAL REVIEW.—No regulation,
24 rule or procedure prescribed by the Resolution
25 Fund pursuant to this paragraph shall be sub-

1 ject to review by any court except to the extent
2 such regulation, rule or procedure is not con-
3 sistent with a provision of this title.

4 (h) JURISDICTION OF FEDERAL COURTS.—Notwith-
5 standing section 1349 of title 28, United States Code:

6 (1) The Resolution Fund shall be deemed to be
7 an agency of the United States for purposes of sec-
8 tions 1345 and 1442 of title 28, United States Code.

9 (2) All civil actions to which the Resolution
10 Fund is a party shall be deemed to arise under the
11 laws of the United States, and the district courts of
12 the United States shall have original jurisdiction of
13 all such actions, without regard to amount or value.

14 (3) Any civil or other action, case or con-
15 troversy in a court of a State, or in any court other
16 than a district court of the United States, to which
17 the Resolution Fund is a party may at any time be-
18 fore the trial thereof be removed by the Resolution
19 Fund, without the giving of any bond or security, to
20 the district court of the United States for the dis-
21 trict and division embracing the place where the
22 same is pending, or, if there is no such district
23 court, to the district court of the United States for
24 the district in which the principal office of the Reso-
25 lution Fund is located, by following any procedure

1 for removal of causes in effect at the time of such
2 removal.

3 (4) No attachment or execution shall be issued
4 against the Resolution Fund or any of its property
5 before final judgment in any State, Federal, or other
6 court.

7 (i) REPORTS.—

8 (1) ANNUAL REPORTS.—The Resolution Fund
9 shall report annually to the President and the Con-
10 gress not later than January 15 of each year on its
11 activities for the prior fiscal year. The report shall
12 include—

13 (A) a financial statement audited by an
14 independent auditor; and

15 (B) a determination of whether the fees
16 and assessments imposed by section ____ of the
17 Internal Revenue Code of 1986 will be suffi-
18 cient to meet the anticipated obligations of the
19 Resolution Fund.

20 (2) SPECIAL REPORTS.—The Resolution Fund
21 shall promptly report to the President and the Con-
22 gress at any time the Resolution Fund determines
23 that the fees and assessments imposed by section
24 ____ of the Internal Revenue Code of 1986 will be

1 insufficient to meet the anticipated obligations of the
2 Resolution Fund.

3 (j) FALSE OR FRAUDULENT STATEMENTS OR
4 CLAIMS.—

5 (1) CRIMINAL PENALTIES.—

6 (A) For purposes of section 287 of title 18,
7 United States Code (relating to false claims),
8 the Resolution Fund shall be considered an
9 agency of the United States and any officer or
10 employee of the Resolution Fund shall be con-
11 sidered a person in the civil service of the
12 United States.

13 (B) For purposes of section 1001 of title
14 18, United States Code (relating to false state-
15 ments or entries), the Resolution Fund shall be
16 considered an agency of the United States.

17 (2) CIVIL PENALTIES.—Officers and employees
18 of the Resolution Fund shall be considered officers
19 and employees of the United States for purposes of
20 section 3729 of title 31, United States Code (relat-
21 ing to false claims).

22 **SEC. 803. FINANCIAL STATEMENTS, AUDITS, INVESTIGA-**
23 **TIONS AND INSPECTIONS.**

24 (a) IN GENERAL.—The financial statements of the
25 Resolution Fund shall be prepared in accordance with gen-

1 erally accepted accounting principles and shall be audited
2 annually by an independent certified public account in ac-
3 cordance with the auditing standards issued by the Comp-
4 troller General. Such auditing standards shall be consist-
5 ent with the private sector's generally accepted auditing
6 standards.

7 (b) INVESTIGATIONS AND OTHER AUDITS.—The In-
8 spector General of the Environmental Protection Agency
9 is authorized to conduct audits and investigations as the
10 Inspector General deems necessary or appropriate. For
11 purposes of the preceding sentence, the provisions of the
12 Inspector General Act of 1978 shall apply to the Resolu-
13 tion Fund and to the Inspector General to the same extent
14 as they apply to the Environmental Protection Agency.

15 **SEC. 804. STAY OF PENDING LITIGATION.**

16 (a) IN GENERAL.—

17 (1) Except as provided in this section, enact-
18 ment of this title operates as a stay, applicable to all
19 person other than the United States, of the com-
20 mencement or continuation, including the issuance
21 or employment of process or service of any pleading,
22 motion, or notice, of any judicial, administrative, or
23 other action with respect to claims for indemnity or
24 other claims arising from a contract for insurance
25 described in section 802(g)(2)(A)(ii) concerning in-

1 surance coverage for eligible costs as defined in sec-
2 tion 802(g)(2)(B)(i).

3 (2) Nothing in paragraph (1) shall be construed
4 to apply to the extent the issuance or employment
5 of process or service of any pleading, motion, or no-
6 tice, of any judicial, administrative, or other action
7 with respect to claims for indemnity or other claims
8 does not concern eligible costs (as defined in section
9 802(g)(2)(B)(i)) or a contract for insurance de-
10 scribed in section 802(g)(2)(A)(ii). An eligible per-
11 son (as defined in section 802(g)(2)(A)) may move
12 to serve claims not involving eligible costs from
13 claims involving eligible costs and may proceed with
14 the prosecution of claims not involving eligible costs.

15 (b) TERMINATION OF STAY.—

16 (1) PENDING OFFER OF RESOLUTION.—The
17 stay established by subsection (a) shall terminate
18 with respect to an eligible person upon the earlier
19 of—

20 (A) the rejection of a resolution offer by
21 such eligible person pursuant to section
22 802(g)(5)(A); or

23 (B) the failure of the Resolution Fund to
24 timely fulfill the terms of a resolution offer ac-
25 cepted by such eligible person.

1 (2) EXPIRATION OF RESOLUTION OFFERS.—No
2 stay established by subsection (a) shall be effective
3 after May 31, 2000.

4 (c) OTHER STAYS.—Nothing in this section shall be
5 construed to limit or affect in any way the discretion of
6 any judicial, administrative, or other entity to maintain
7 or impose a stay that is not required by subsection (a)
8 but that will otherwise serve the ends of justice by staying
9 a judicial, administrative or other action pending the ac-
10 ceptance or rejection of a resolution offer pursuant to sec-
11 tion 802(g)(5)(A).

12 (d) AUTHORITY OF UNITED STATES UNAF-
13 FECTED.—Nothing in this section shall be construed to
14 limit or affect in any way the discretion or authority of
15 the United States or any party to commerce or continue
16 all allocation process, cost recovery, or other action pursu-
17 ant to the authority of sections 101–122a of the Com-
18 prehensive Environmental Response, Compensation and
19 Liability Act (42 U.S.C. 9601–9622a).

20 **SEC. 805. SUNSET PROVISIONS.**

21 (a) AUTHORITY TO ACCEPT REQUEST FOR RESOLU-
22 TION.—The authority of the Resolution Fund to accept
23 requests for resolution shall terminate after September 30,
24 1999.

1 (b) AUTHORITY TO OFFER RESOLUTIONS.—The au-
2 thority of the Resolution Fund to offer resolutions to eligi-
3 ble persons shall terminate after March 31, 2000.

4 (c) CONTINUING OBLIGATIONS.—Nothing in this sec-
5 tion shall be construed to limit or affect in any way the
6 authority of the Resolution Fund—

7 (1) to make payments pursuant to resolution
8 offers made on or before March 31, 2000; or

9 (2) to reimburse insurers with respect to litiga-
10 tion commenced or continued in connection with a
11 resolution offer made on or before March 31, 2000,
12 that was rejected by an eligible person or not acted
13 upon by an eligible person as provided in section
14 802(g)(5)(a).

15 **SEC. 806. SOVEREIGN IMMUNITY OF THE UNITED STATES.**

16 No obligation or liability of the Resolution Fund shall
17 constitute an obligation or liability of the United States,
18 or of any department, agency, instrumentality, officer, or
19 employee thereof. No person shall have a cause of action
20 of any kind against the United States, or any department
21 agency, instrumentality, officer, or employee thereof with
22 respect to any obligation, liability, or activity of the Reso-
23 lution Fund.

1 **SEC. 807. EFFECTIVE DATE.**

2 The provisions of this title shall become effective on
3 the date of enactment of this title.

4 **TITLE IX—TAXES**

5 **SEC. 901. AMENDMENTS TO THE INTERNAL REVENUE CODE**
6 **OF 1986.**

7 (a) Section 59A(e)(1) of the Internal Revenue Code
8 of 1986 (26 U.S.C. 59A(e)(1)) is amended by striking
9 “January 1, 1996” and inserting instead “January 1,
10 2001”.

11 (b) Section 4611(e) of the Internal Revenue Code of
12 1986 (26 U.S.C. 4611(e)) is amended—

13 (1) in paragraph (1), by striking “December
14 31, 1986” and inserting instead “December 31,
15 1995”;

16 (2) in paragraph (2)—

17 (A) by striking “December 31, 1993 or
18 December 31, 1994” and inserting instead
19 “December 31, 1998 or December 31, 1999”;

20 (B) by striking “December 31, of 1994 or
21 1995, respectively” and inserting instead “De-
22 cember 31 of 1999 or 2000, respectively”; and

23 (C) by striking “1994 or 1995” the last
24 place it appears and inserting instead “1999 or
25 2000”;

1 (3) in paragraph (3)(A), by striking “January
2 1, 1987, and ending December 31, 1995” and in-
3 serting instead “January 1, 1996, and ending De-
4 cember 31, 2000”; and

5 (4) in paragraph (3)(B)—

6 (A) in the title thereof, by striking “Janu-
7 ary 1, 1996” and inserting “January 1, 2001”;
8 and

9 (B) by striking “Fund before January 1,
10 1996” and inserting instead “Fund before Jan-
11 uary 1, 2001”.

12 **SEC. 902. ENVIRONMENTAL FEES AND ASSESSMENTS ON IN-**
13 **SURANCE COMPANIES.**

14 (a) IN GENERAL.—The Internal Revenue Code of
15 1986 is amended by inserting after section ____ the fol-
16 lowing new section:

17 “§ . **Environmental fees and assessments on insur-**
18 **ance companies**”.

19 [RESERVED]

20 (b) CLERICAL AMENDMENTS.—The table of sections
21 for chapter ____ of the Internal Revenue Code of 1986
22 is amended by inserting after the item relating to section
23 ____ the following:

1 **“§ . Environmental fees and assessments on insur-**
2 **ance companies”.**

3 **SEC. 903. FUNDING PROVISIONS FOR ENVIRONMENTAL IN-**
4 **SURANCE RESOLUTION FUND.**

5 (A) IN GENERAL.—

(1) Except as provided in section 802(f)(7) of this Act, all expenditures of the Resolution Fund shall be paid out of the fees and assessments imposed by section ____ of the Internal Revenue Code.

(2) Except as may be expressly authorized by the Secretary of the Treasury, all funds of the Resolution Fund shall be maintained in the Treasury of the United States. The Secretary may provide for the disbursement of such funds to the Resolution Fund or on behalf of the Resolution Fund under such procedures, terms and conditions as the Secretary may prescribe.

(b) TRANSFER TO RESOLUTION FUND.—The Secretary of the Treasury shall transfer to the Resolution Fund on October 1 of fiscal year 1995, 1996, 1997, 1998 and 1999, an amount equal to the fees and assessments anticipated to be collected pursuant to section ____ of the Internal Revenue Code of 1986 during the then current fiscal year.

(c) ADJUSTMENTS.—In each succeeding fiscal year the Secretary of the Treasury shall adjust the amounts

1 transferred pursuant to paragraph (2) to reflect actual
 2 collections of fees and assessments during the prior fiscal
 3 year, except that with respect to the transfer made on Oc-
 4 tober 1, 1999, the Resolution Fund shall reimburse the
 5 Secretary the amount of such transfer subsequently deter-
 6 mined by the Secretary to have exceeded actual collections
 7 of fees and assessments during such fiscal year.

8 **SEC. 904. RESOLUTION FUND NOT SUBJECT TO TAX.**

9 The Resolution Fund, including its capital, reserves,
 10 surplus, security holdings, and income shall be exempt
 11 from all taxation now or hereafter imposed by the United
 12 States (including any territory, dependency or possession
 13 thereof) or any State, county, municipality or local taxing
 14 authority.

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